2014

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued September 2014

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2014 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2014 Regular Session and 1st and 2nd Extraordinary Sessions.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2014 Regular Session and 1st and 2nd Extraordinary Sessions.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 21. MUNICIPALITIES

CHAPTER 19. Health, Safety, and Welfare

SEC.

21-19-46. Donating to Court Appointed Special Advocates (CASA).

21-19-67. Annual donations to chartered chapters of the Boys and Girls Clubs of America or the Young Men's Christian Association (YMCA), or to certain certified farmers' markets located within the municipality.

21-19-69. Donating to support certified farmers' market.

CHAPTER 23. Municipal Courts

21-23-23. Municipal Court Collections Fund created; purpose; source of funds.

CHAPTER 29. Employees' Retirement and Disability Systems

ARTICLE 7. MISCELLANEOUS PROVISIONS

21-29-331. Persons to whom benefits payable in event of death or disqualification of designated beneficiary.

21-29-333. Waiver of benefits from the general municipal retirement system or firemen's and policemen's disability and relief fund.

CHAPTER 33. Taxation and Finance

ARTICLE 5. BONDS

21-33-325.1. Borrowing in anticipation of taxes by certain municipalities.

CHAPTER 37. Streets, Parks and Other Public Property

21-37-55. Conveyance of land in slum, blighted or urban renewal areas to urban renewal agencies by certain municipalities.

TITLE 23. ELECTIONS

CHAPTER 15. Mississippi Election Code

ARTICLE 1. IN GENERAL

23-15-5. Elections Support Fund created; use of funds.

23-15-7. Mississippi Voter Identification Card.

ARTICLE 17. CONDUCT OF ELECTIONS

SUBARTICLE A. GENERAL PROVISIONS

23-15-563. Qualified elector required to provide Identification before voting; kinds of identification; voting by affidavit ballot.

ARTICLE 25. VACANCIES IN OFFICE

23-15-832. Notice to Secretary of State of vacancy in office for which special election is required to be called to fill.

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Article 35. Political Parties

Sec.

23-15-1054. Methods and procedures for selection of temporary county executive committee.

CHAPTER 17. Amendments to Constitution by Voter Initiative

23-17-8. Correction of certain nonsubstantive clerical or technical errors in the section number reference or designation of a proposed constitutional amendment.

MISSISSIPPI CODE 1972

ANNOTATED

VOLUME SIX

TITLE 21

MUNICIPALITIES

CHAPTER 1

Classification, Creation, Abolition, and Expansion

INCORPORATION

§ 21-1-13. Preparing and filing of petition.

JUDICIAL DECISIONS

2. Sufficiency of petition.

Failure of incorporators to include page three when they filed a first petition for incorporation was a clerical error and not a failure to comply with the specific requirements of Miss. Code Ann. § 21-1-13; incorporation pleadings were amendable pursuant to Miss. R. Civ. P. 15. City of Jackson v. Byram Incorporators, 16 So. 3d 662 (Miss. 2009).

§ 21-1-15. Publication of notice of proposed incorporation.

JUDICIAL DECISIONS

2. Construction.

Addition of two parties in a revised petition for incorporation did not render the petition jurisdictionally fatal, pursuant to Miss. Code Ann. § 21-1-15 because Miss. R. Civ. P. 21 applied to petitions of incorporation where the parties had received timely service of process and neither party objected to the proposed incorporation. City of Jackson v. Byram Incorporators, 16 So. 3d 662 (Miss. 2009).

EXTENSION OR CONTRACTION OF CORPORATE BOUNDARIES

§ 21-1-27. Passing of ordinance.

JUDICIAL DECISIONS

1. In general.
2. Annexation of territory.

1. In general.

In granting a proposed incorporation, a chancery court properly considered that the incorporation would not impair an immediate right to annex of an adjoining city; although the incorporation might substantially hinder the city's future growth, the city did not have an unfettered right to annexation. City of Jackson v. Byram Incorporators, 16 So. 3d 662 (Miss. 2009).

2. Annexation of territory.

Approval of a proposed annexation in favor of the city was proper, in part because the city was in a strong financial condition and was well-equipped to implement the services and facilities plan and the objectors conceded that the city had the financial ability to provide municipal services to the proposed annexation area. Additionally, trash pickup in the proposed annexation area occurred only once a week, which contributed to uncollected waste and the spread of disease in the area; the city presented evidence that it planned to provide garbage collection twice per week. Russell v. City of Madison (In re City of Madison), 983 So. 2d 1035 (Miss. 2008).

§ 21-1-29. Preparing and filing of petition.

ATTORNEY GENERAL OPINIONS

An annexation is final and effective for all purposes 10 days after issuance of the decree by the chancery court, or 10 days after final determination of an appeal, except that citizens residing in an annexed area may not participate in future municipal elections as electors or as candidates, unless and until pre-clearance by the U.S. Department of Justice is obtained pursuant to Section 5 of the Voting Rights Act. Mallette, March 2, 2007, A.G. Op. #07-00096, 2007 Miss. AG LEXIS 72, modifying Rafferty, November 27, 2006, A.G. Op. #06-00598, 2006 Miss. AG LEXIS 428, as to the effective date of annexation for all purposes other than voting and candidacy.

§ 21-1-33. Hearing on petition; decree.

JUDICIAL DECISIONS

6. Evidence.

Chancery court properly determined that a city's annexation of its neighbors into its boundaries was reasonable and supported by the evidence where the city had spilled over into the proposed annexation area (PAA) and was continuing to expand into the county; unregulated development in the PAA was putting a strain on utilities and other municipal services. In re Enlarging City of Brookhaven, 957 So. 2d 382 (Miss. 2007).

ATTORNEY GENERAL OPINIONS

An annexation is final and effective for all purposes 10 days after issuance of the decree by the chancery court, or 10 days after final determination of an appeal, except that citizens residing in an annexed area may not participate in future municipal elections as electors or as candidates, unless and until pre-clearance by the U.S. Department of Justice is obtained pursuant to Section 5 of the Voting Rights Act. Mallette, March 2, 2007, A.G. Op. #07-00096, 2007 Miss. AG LEXIS 72, modifying Rafferty, November 27, 2006, A.G. Op. #06-00598, 2006 Miss. AG LEXIS 428, as to the effective date of annexation for all purposes other than voting and candidacy.

INCLUSION OF STATE INSTITUTIONAL FACILITIES

SEC.

§ 21-1-59. Municipalities may not incorporate state institutions without consent; effect of annexation crossing county lines on schools in annexed areas; annexations prior to March 18, 1987 ratified; municipalities authorized to enter agreements with enterprises operating certain projects provided that such municipalities not change boundaries to include project site.

(1) No municipality shall be created or shall change its boundaries so as to include within the limits of such municipality any of the buildings or grounds of any state institution, unless consent thereto shall be obtained in writing from the board of trustees of such institution or such other governing board or body as may be created for the control of such institution. Inclusion of the buildings or grounds of any state institution within the area of a municipal incorporation or expansion without the consent hereinabove required shall be voidable at the option of the affected institution within six (6) months after the institution becomes aware of the inclusion. Upon consent to inclusion within

the area of a municipal incorporation or expansion, a state institution may require, subject to agreement of the municipality involved, conditions relating to land use development, zoning requirements, building codes and delivery of governmental services which shall be applicable to the buildings or grounds of the institution included in the municipality.

Provided further, that any future changes in the boundaries of a presently existing municipality which extends into or further extends into a county other than the county in which the municipality's principal office is located shall not affect the public school district located in the annexed area, unless and until consent thereto shall have first been obtained in writing from the board of trustees of the school district proposed to be partially or wholly included in the change of municipal boundaries.

Provided further, that any change in the boundaries of a presently existing municipality of any Class 1 county having two (2) judicial districts, being traversed by U.S. Highway 11 which intersects U.S. Highway 84, shall not affect the public school district located in the annexed area and shall not change the governmental unit to which the school taxes are paid, unless approved by referendum as hereinafter provided.

In the event that twenty percent (20%) of the registered voters residing within the area to be annexed by a municipality petition the governing body of such municipality for a referendum on the question of inclusion in the municipal school district within sixty (60) days of public notice of the adoption of such ordinance, such notice given in the same manner and for the same length of time as is provided in Section 21-1-15 with regard to the creation of municipal corporations, the governing body of the county in which the area to be annexed is located shall hold a referendum of all registered voters residing within the area to be annexed on the question of inclusion in the municipal school district. Approval of the ordinance shall be made by a majority vote of the qualified electors voting in said referendum to be held within ninety (90) days from the date of filing and certification of the petition provided for herein on the question of such extension or contraction. The referendum shall be held in the same manner as are other county elections.

The inclusion of buildings or grounds of any state institution within the area of a municipal incorporation or expansion in any proceedings creating a municipality or enlarging the boundaries of a municipality prior to the effective date of Senate Bill 2307, 1987 Regular Session (Chapter 359, eff March 18, 1987), is hereby ratified, confirmed and validated, regardless of whether such inclusion was in conformity with the requirements of this section at the time of such proceedings, and such inclusion shall not be void or voidable by any affected state institution on or after the effective date of Senate Bill 2307, 1987 Regular Session (Chapter 359, eff March 18, 1987). This paragraph shall not be applicable to and shall not be construed to validate the inclusion of buildings or grounds of any state institution within the area of a municipal incorporation or expansion where such inclusion or the proceedings involving such inclusion were declared invalid or void in a final adjudication of a court of competent jurisdiction prior to the effective date of Senate Bill 2307, 1987

Regular Session (Chapter 359, eff March 18, 1987), and the decision of such court was not appealed within the applicable time period for appeals from such court or was not overturned by any court to which an appeal may have been made.

(2) The governing authorities of a municipality may enter into an agreement with an enterprise operating a project as defined in Section 57-75-5(f)(iv)1, Section 57-75-5(f)(xxi) or Section 57-75-5(f)(xxviii) providing that the municipality shall not change its boundaries so as to include within the limits of such municipality the project site of such a project unless consent thereto shall be obtained in writing from the enterprise operating the project. Such agreement may be for a period not to exceed thirty (30) years. Such agreement shall be binding on future governing authorities of such municipality.

SOURCES: Codes, 1930, § 2378; 1942, § 3374-18; Laws, 1928, ch. 29; Laws, 1950, ch. 491, § 18; Laws, 1977, ch. 379; Laws, 1978, ch. 312, § 1; Laws, 1987, ch. 359; Laws, 2000, 3rd Ex Sess, ch. 1, § 18; Laws, 2007, ch. 303, § 6; Laws, 2013, 1st Ex Sess, ch. 1, § 13, eff from and after passage (approved Apr. 28, 2013.)

Amendment Notes — The 2013 amendment inserted "or Section 57-75-5(f)(xxviii)" in the first sentence of (2).

TAX LIABILITY

§ 21-1-61. Tax liability in case of creation or enlargement of municipality.

ATTORNEY GENERAL OPINIONS

An annexation is final and effective for all purposes 10 days after issuance of the decree by the chancery court, or 10 days after final determination of an appeal, except that citizens residing in an annexed area may not participate in future municipal elections as electors or as candidates, unless and until pre-clearance by the U.S. Department of Justice is obtained pursuant to Section 5 of the Voting Rights Act. Mallette, March 2, 2007, A.G. Op. #07-00096, 2007 Miss. AG LEXIS 72, modifying Rafferty, November 27, 2006, A.G. Op. #06-00598, 2006 Miss. AG LEXIS 428, as to the effective date of annexation for all purposes other than voting and candidacy.

CHAPTER 3

Code Charters

SEC.

§ 21-3-1. Adoption of code charter.

ATTORNEY GENERAL OPINIONS

Under a mayor/alderman form of municipal government the day-to-day operations of the municipal police department lies with the duly appointed or elected chief of police. Redmond, Aug. 26, 2005, A.G. Op. 05-0447.

§ 21-3-3. Elective officers; certain officers may be appointive.

ATTORNEY GENERAL OPINIONS

Governing authorities of a municipality may not enter into an employment contract for a specified period of time. Rule, Apr. 8, 2005, A.G. Op. 05-0156.

Pursuant to Miss. Code Ann. § 21-3-3, the Chief of Police is an elected position unless a municipality makes it an appointive position. An elected Chief of Police must be a qualified elector of the municipality and is therefore required by statute to reside within the corporate limits. A municipality that has made the Chief of Police an appointive position has the discretion to require or not require the Chief of Police to reside within the corporate limits. Noble, February 9, 2007, A.G. Op. #07-00043, 2007 Miss. AG LEXIS 16.

There is no authority for municipal governing authorities to remove or suspend an elected police chief based on an indictment. A municipal governing authority may make the police chief or other municipal officers appointive, rather than elective, by adopting an ordnance, not within 90 days of an election, that will become effective when the current officer's term expires. If an elected Chief of Police resigns or is disqualified from his position and the remainder of the term is over 6 months, the City must hold a special election to fill the vacancy pursuant to Miss. Code Ann. § 23-15-857. Elliott, March 23, 2007, A.G. Op. #07-00137, 2007 Miss. AG LEXIS 116.

The Chief of Police must be included in the civil service system of the city of Ocean Springs because the more specific provisions of Miss. Code Ann. § 21-31-13, concerning civil service systems in a handful of described municipalities, control over the more general provisions of Miss. Code Ann. § 21-3-3, which applies to all code charter municipalities in Mississippi. Edwards, March 30, 2007, A.G. Op. #07-00152, 2007 Miss. AG LEXIS 134.

Authority to hire, fire, set compensation, and define duties of municipal employees rests solely with the board of aldermen, subject to mayoral veto power. Whether a part-time police chief is sufficient to satisfy the municipality's statutory duty to provide police protection is a factual determination to be made by the governing authority. If a municipality does not have a police chief, the board of aldermen must appoint one. An untrained part-time police officer is a law enforcement trainee who must be supervised by a certified officer and has two years from hiring to become certified. McLain, March 2, 2007, A.G. Op. #07-00069, 2007 Miss. AG LEXIS 82.

Authority to hire and fire municipal employees rests solely with the Board of Aldermen, subject to mayoral veto power. The mayor may not instruct employees to disregard the official actions of the Board, and may not hire or fire municipal employees. A Board of Aldermen may adopt uniformly applied work schedule policies providing for overtime pay and such pay may only be made when there is a policy authorizing it. Reynolds, March 30, 2007, A.G. Op. #07-00155, 2007 Miss. AG LEXIS 68.

§ 21-3-5. Appointive officers.

From and after the expiration of the terms of office of present municipal officers, the mayor and board of aldermen of all municipalities operating under this chapter shall have the power and authority to appoint a street commissioner, and such other officers and employees as may be necessary, and to prescribe the duties and fix the compensation of all such officers and employees. All officers and employees so appointed shall hold office at the pleasure of the governing authorities and may be discharged by such governing authorities at any time, either with or without cause. The governing authorities of municipalities shall have the power and authority, in their discretion, to appoint the same person to any two (2) or more of the appointive offices, and in a municipality having a population of less than fifteen thousand (15,000), according to the latest available federal census, a member of the board of aldermen may be appointed to the office of street commissioner. In municipalities not having depositories, the clerk shall serve as ex officio treasurer. The municipal governing authorities shall require all officers and employees handling or having the custody of any public funds of such city to give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in an amount to be determined by the governing authority (which shall be not less than Fifty Thousand Dollars ($50,000.00)), the premium on same to be paid from the municipal treasury. The terms of office or employment of all officers and employees so appointed shall expire at the expiration of the term of office of the governing authorities making the appointment, unless such officers or employees shall have been sooner discharged as herein provided.

SOURCES: Codes, 1942, § 3374-37; Laws, 1950, ch. 491, § 37; Laws, 1984, ch. 409; Laws, 1986, ch. 458, § 22; Laws, 1988, ch. 488, § 2; Laws, 2009, ch. 467, § 7, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment substituted "Fifty Thousand Dollars ($50,000.00)" for "Ten Thousand Dollars ($10,000.00)" in the next-to-last sentence.

ATTORNEY GENERAL OPINIONS

Although a city chief of police can be both an employee of the municipality and employed by the state as a conservation officer, the employee/officer cannot work and be paid by both entities for the same time. Rule, Apr. 8, 2005, A.G. Op. 05-0156.

Unless an appointee resigns or otherwise disqualifies himself, he is entitled to serve out the remainder of his term. Cardin, Aug. 26, 2005, A.G. Op. 05-0428.

An individual may serve as alderman without compensation and it is within the power of the municipal governing authority to amend its ordinance to allow for such voluntary service. Baum, Aug. 26, 2005, A.G. Op. 05-0434.

In order to comply with the provisions of Section 21-3-23, the street commissioner has the authority to direct "maintenance personnel" or other municipal employees only to the extent that such employees have been assigned by the mayor or by the mayor and board of alderman to duties relating to the maintenance of streets, alleys, avenues and sidewalks. Oct. 28, 2005, A.G. Op. 05-0528.

A duly appointed city engineer continues to serve until the board of aldermen

either overrides the mayor's veto of the aldermen's vote to replace the engineer or makes an appointment that is not vetoed. Smith, Dec. 16, 2005, A.G. Op. 05-0594.

A Board of Aldermen is the legislative body of the city and may adopt personnel policies and procedures which govern departmental employees and equipment, including limits on the number of hours worked in a week, so long as they are applied uniformly. The Mayor is the chief executive officer of the municipality and has superintending control of the officers and affairs of the municipality as well as the responsibility of enforcing the laws and ordinances of the municipality. Taylor, February 23, 2007, A.G. Op. #07-00078, 2007 Miss. AG LEXIS 31.

Both the mayor and the aldermen have the authority to place items on the agenda, but only the board of aldermen may remove matters from the agenda, establish the order of the agenda, control the manner in which the agenda is developed, and determine who is allowed to be present during an executive session. Sullivan, March 16, 2007, A.G. Op. #07-00115, 2007 Miss. AG LEXIS 111.

Neither the mayor nor the board of aldermen may become involved in the daily operations of the police department, supervise officers, or direct the police chief's supervision of law enforcement. The board of aldermen has authority to appoint, hire, and fire municipal officers and employees, fix their compensation, prescribe their duties, and adopt personnel policies and procedures, subject to the mayor's veto. Sullivan, March 16, 2007, A.G. Op. #07-00115, 2007 Miss. AG LEXIS 111.

Authority to hire, fire, set compensation, and define duties of municipal employees rests solely with the board of aldermen, subject to mayoral veto power. Whether a part-time police chief is sufficient to satisfy the municipality's statutory duty to provide police protection is a factual determination to be made by the governing authority. If a municipality does not have a police chief, the board of aldermen must appoint one. An untrained part-time police officer is a law enforcement trainee who must be supervised by a certified officer and has two years from hiring to become certified. McLain, March 2, 2007, A.G. Op. #07-00069, 2007 Miss. AG LEXIS 82.

Authority to hire and fire municipal employees rests solely with the Board of Aldermen, subject to mayoral veto power. The mayor may not instruct employees to disregard the official actions of the Board, and may not hire or fire municipal employees. A Board of Aldermen may adopt uniformly applied work schedule policies providing for overtime pay and such pay may only be made when there is a policy authorizing it. Reynolds, March 30, 2007, A.G. Op. #07-00155, 2007 Miss. AG LEXIS 68.

§ 21-3-7. Number of aldermen and their election.

ATTORNEY GENERAL OPINIONS

Regardless of whether the city board is or is not in official session, individual members of a board of aldermen have no authority to direct the daily activities of municipal employees. Hurt, Oct. 13, 2006, A.G. Op. 06-0499.

§ 21-3-9. Qualifications of mayor and aldermen.

JUDICIAL DECISIONS

3. Relation to other laws.

Black chairman of a county political party executive committee was guilty of racial discrimination under § 2 of the Voting Rights Act because, inter alia, he urged nonresident black candidates to run for office against white incumbents, when he knew they were not qualified based on the residency requirements in Miss. Code Ann. § 21-3-9. United States v. Brown,

494 F. Supp. 2d 440 (S.D. Miss. June 29, 2007), affirmed by 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

ATTORNEY GENERAL OPINIONS

If a board of aldermen determines, consistent with the facts, that a member is no longer a resident of the ward he was elected to serve and is not merely temporarily residing outside his ward but has abandoned same, a vacancy would have to be declared and a special election set in accordance with Section 23-15-857. Skellie, Aug. 18, 2006, A.G. Op. 06-0377.

§ 21-3-13. Mayor pro tempore.

ATTORNEY GENERAL OPINIONS

When acting as mayor pro tem, an alderman in a code-charter municipality may only exercise the authority of the mayor to vote, that is, in the case of a tie. Brooks, Feb. 3, 2006, A.G. Op. 06-0029.

A mayor's mere physical absence from the jurisdiction does not trigger the powers of the mayor pro tempore. A mayor must be absent from a jurisdiction in such a manner so as to prevent the mayor from performing the duties of the office. Bryan, Aug. 11, 2006, A.G. Op. 06-0012.

§ 21-3-15. Duties of the mayor; authority of the board of aldermen.

(1) The mayor shall preside at all meetings of the board of aldermen, and in case there shall be an equal division, shall give the deciding vote. The executive power of the municipality shall be exercised by the mayor, and the mayor shall have the superintending control of all the officers and affairs of the municipality, and shall take care that the laws and ordinances are executed.

(2)(a) The legislative power of the municipality shall be exercised by the board of aldermen by a vote within a legally called meeting. No member of the board of aldermen shall give orders to any employee or subordinate of a municipality other than the alderman's personal staff.

(b) Ordinances adopted by the board of aldermen shall be submitted to the mayor. The mayor shall, within ten (10) days after receiving any ordinance, either approve the ordinance by affixing his signature thereto, or return it to the board of aldermen by delivering it to the municipal clerk together with a written statement setting forth his objections thereto or to any item or part thereof. No ordinance or any item or part thereof shall take effect without the mayor's approval, unless the mayor fails to return an ordinance to the board of aldermen prior to the next meeting of the board, but no later than fifteen (15) days after it has been presented to him, or unless the board of aldermen, upon reconsideration thereof on or after the third day following its return by the mayor, shall, by a vote of two-thirds (⅔) of the members of the board, resolve to override the mayor's veto.

(3) The term "ordinance" as used in this section shall be deemed to include ordinances, resolutions and orders.

SOURCES: Codes, 1892, § 2979; 1906, § 3377; Hemingway's 1917, § 5905; 1930, § 2513; 1942, § 3374-40; Laws, 1950, ch. 491, § 40; Laws, 1982, ch. 472; Laws, 2006, ch. 333, § 1; Laws, 2008, ch. 435, § 1, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment substituted "executive power of the municipality shall be exercised by the mayor" for "mayor's authority is executive" in (1); in (2)(a), substituted the present first sentence for the former first sentence, which read: "The authority of the board of aldermen is legislative and is executed by a vote within a legally called meeting."

JUDICIAL DECISIONS

2. Constitutionality.

Where the mayor and board of aldermen held a special session without giving notice and overturned the decision of the board of zoning appeals affirming a building permit in favor of an ice company, the mayor exceeded his authority under Miss. Code Ann. § 21-3-15. The company's right to due process was violated. City of Petal v. Dixie Peanut Co., 994 So. 2d 835 (Miss. Ct. App. 2008), writ of certiorari dismissed by 998 So. 2d 1010, 2008 Miss. LEXIS 683 (Miss. 2008).

ATTORNEY GENERAL OPINIONS

Pursuant to Section 21-3-15, action to override a veto cannot occur sooner than three days after the delivery of the veto message to the board by the mayor. It is suggested that override of a mayoral veto is a proper subject for a special meeting to avoid undue delay in finalizing any ordinances, orders or resolutions which may have been the subject of the veto. Wiggins, July 29, 2005, A.G. Op. 05-0385.

In municipalities in which the mayor has been given no role in the approval of the minutes of the governing authority, "receipt" for purposes of Section 21-3-15 is the meeting in which the minutes are presented for approval by the board of aldermen. The 10 days would begin to run from the date of the meeting at which the minutes are approved. In municipalities in which the authority to approve the minutes has been delegated to the mayor, the 10-day period begins to run at the time the clerk presents the minutes to the mayor. Wiggins, July 29, 2005, A.G. Op. 05-0385.

The authority of the mayor of a code charter municipality to veto ordinances, resolutions and orders includes the appointment of municipal officials. Cole, July 29, 2005, A.G. Op. 05-0374.

In a code charter municipality with five aldermen, four aldermen may hold a meeting and may take official action without the presence of the mayor or the mayor pro tempore. Four aldermen may meet and may take official action with three aldermen constituting a quorum and one aldermen serving as mayor pro tempore for the meeting. Brown, Aug. 11, 2005, A.G. Op. 05-0399.

Although the statute prescribes no time frame in which the board of aldermen is to act to override a veto, a board must act to override not later than the next lawfully convened regular or special meeting of the governing authority. Brown, Aug. 11, 2005, A.G. Op. 05-0400.

The person appointed by the board of aldermen is not entitled to continue to serve after a mayoral veto of that appointment. If the veto is overridden, the appointment is valid. Brown, Aug. 11, 2005, A.G. Op. 05-0400.

The municipal clerk has no authority to preside over a meeting of the governing authorities. Brown, Aug. 11, 2005, A.G. Op. 05-0400.

When acting as mayor pro tem, an alderman in a code-charter municipality may only exercise the authority of the mayor to vote, that is, in the case of a tie. Brooks, Feb. 3, 2006, A.G. Op. 06-0029.

A mayor has the authority to enact policies related to the overall supervision

of employees and department heads and to give directives to the employees or department heads regarding their duties. To the extent, however, that a policy or directive adversely impacts the ability of the legislative branch to obtain information necessary to make decisions and to carry out the business of the city, such policies would be contrary to the statutory scheme set out for the mayor/alderman form of government. Goddard, June 16, 2006, A.G. Op. 06-0248.

Regardless of whether the city board is or is not in official session, individual members of a board of aldermen have no authority to direct the daily activities of municipal employees. Hurt, Oct. 13, 2006, A.G. Op. 06-0499.

A Board of Aldermen is the legislative body of the city and may adopt personnel policies and procedures which govern departmental employees and equipment, including limits on the number of hours worked in a week, so long as they are applied uniformly. The Mayor is the chief executive officer of the municipality and has superintending control of the officers and affairs of the municipality as well as the responsibility of enforcing the laws and ordinances of the municipality. Taylor, February 23, 2007, A.G. Op. #07-00078, 2007 Miss. AG LEXIS 31.

Both the mayor and the aldermen have the authority to place items on the agenda, but only the board of aldermen may remove matters from the agenda, establish the order of the agenda, control the manner in which the agenda is developed, and determine who is allowed to be present during an executive session. Sullivan, March 16, 2007, A.G. Op. #07-00115, 2007 Miss. AG LEXIS 111.

Neither the mayor nor the board of aldermen may become involved in the daily operations of the police department, supervise officers, or direct the police chief's supervision of law enforcement. The board of aldermen has authority to appoint, hire, and fire municipal officers and employees, fix their compensation, prescribe their duties, and adopt personnel policies and procedures, subject to the mayor's veto. Sullivan, March 16, 2007, A.G. Op. #07-00115, 2007 Miss. AG LEXIS 111.

Authority to hire and fire municipal employees rests solely with the Board of Aldermen, subject to mayoral veto power. The mayor may not instruct employees to disregard the official actions of the Board, and may not hire or fire municipal employees. A Board of Aldermen may adopt uniformly applied work schedule policies providing for overtime pay and such pay may only be made when there is a policy authorizing it. Reynolds, March 30, 2007, A.G. Op. #07-00155, 2007 Miss. AG LEXIS 68.

§ 21-3-19. Regular meetings of board of aldermen; recess of meetings; quorum.

(1) The mayor and board of aldermen shall hold regular meetings the first Tuesday of each month at such place and hour as may be fixed by ordinance, and may, on a date fixed by ordinance, hold a second regular meeting in each month at the same place established for the first regular meeting provided said second meeting shall be held at a day and hour fixed by said ordinance which shall be not less than two (2) weeks from the first day of the first regular meeting and not more than three (3) weeks from the date thereof. When a regular meeting of the mayor and board of aldermen shall fall upon a holiday, the mayor and board shall meet the following day. The mayor and board may recess either meeting from time to time to convene on a day fixed by an order of the mayor and board entered on its minutes, and may transact any business coming before it for consideration. In all cases it shall require a majority of all aldermen to constitute a quorum for the transaction of business. The quorum

required by this section may be established by teleconference or video means as provided in Section 25-41-5(2)(b).

(2) The mayor and board of aldermen may, pursuant to Section 21-17-17, Mississippi Code of 1972, set a day other than Tuesday for the holding of their regular monthly meeting.

SOURCES: Codes, 1892, § 2989; 1906, § 3387; Hemingway's 1917, § 5915; 1930, § 2523; 1942, § 3374-43; Laws, 1950, ch. 491, § 43; Laws, 1960, ch. 423; Laws, 1973, ch. 324, § 1; Laws, 1979, ch. 403, § 2; Laws, 2012, ch. 442, § 2, eff September 20, 2012 (the date the United States Attorney General determined the amendment of this section was not subject to Section 5 of the Voting Rights Act of 1965.)

Editor's Note — Laws of 2012, ch. 442, §§ 7 and 8 provide:

"SECTION 7. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 8. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated September 20, 2012, the United States Attorney General determined that the amendments to this section by Chapter 442, Laws of 2012, were not subject to preclearance under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Amendment Notes — The 2012 amendment added the last sentence in (1).

§ 21-3-21. Special meetings of board of aldermen.

ATTORNEY GENERAL OPINIONS

Notice requirements of Section 21-3-21 are jurisdictional, and failure to strictly comply with these requirements when calling a special meeting renders any actions taken during that meeting null and void. Rule, Apr. 8, 2005, A.G. Op. 05-0156.

§ 21-3-23. Duties of street commissioner.

ATTORNEY GENERAL OPINIONS

In order to comply with the provisions of Section 21-3-23, the street commissioner has the authority to direct "maintenance personnel" or other municipal employees only to the extent that such employees have been assigned by the mayor or by the mayor and board of alderman to duties relating to the maintenance of streets, alleys, avenues and sidewalks. King, Oct. 28, 2005, A.G. Op. 05-0528.

CHAPTER 5

Commission Form of Government

SEC.

§ 21-5-13. Meetings of council; quorum; voting.

(1) Regular public meetings of the council shall be held on the first day of July after the election of the mayor and councilmen (or commissioners) that is not on a weekend, and thereafter at least twice each month, at such time as the council may by resolution provide. When a regular meeting of the council shall fall on a holiday, the council shall meet the following day.

Special meetings may be called at any time by the mayor or by two (2) councilmen. At any and all meetings of the council, a majority of all the members thereof shall constitute a quorum. The quorum required by this section may be established by teleconference or video means as provided in Section 25-41-5(2)(b). The affirmative vote of a majority of all the members of the council shall be necessary to adopt any motion, resolution or ordinance, or to pass any measure whatever, unless a greater number is provided for in this chapter. Upon every vote taken by the council, the yeas and nays shall be called and recorded, and every motion, resolution or ordinance shall be reduced to writing before the vote is taken thereon. Upon request of one or more council members, any motion, resolution or ordinance shall be read by the clerk before the vote is taken thereon.

(2) The council may, pursuant to Section 21-17-17, set a day other than Monday for the holding of its regular bimonthly meeting.

SOURCES: Codes, Hemingway's 1917, § 6049; 1930, § 2637; 1942, § 3374-51; Laws, 1912, ch. 120; Laws, 1950, ch. 491, § 51; Laws, 1973, ch. 324, § 2; Laws, 1979, ch. 403, § 3; Laws, 1987, ch. 503, § 1; Laws, 2010, ch. 319, § 4; Laws, 2012, ch. 442, § 3, eff September 20, 2012 (the date the United States Attorney General determined the amendment of this section was not subject to Section 5 of the Voting Rights Act of 1965.)

Editor's Note — By letter dated July 22, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 319, § 4.

Laws of 2012, ch. 442, §§ 7 and 8 provide:

"SECTION 7. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 8. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated September 20, 2012, the United States Attorney General determined that the amendments to this section by Chapter 442, Laws of 2012, were not subject to preclearance under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Amendment Notes — The 2010 amendment, in the first sentence of the first paragraph of (1), substituted "first day of July" for "first Monday in July" and inserted "that is not on a weekend."

The 2012 amendment added the third sentence in the second paragraph of (1).

§ 21-5-23. Commission form Laws of 1908 not repealed.

Nothing in this chapter shall be construed in any way to affect, alter or modify the existence of municipalities now operating under Chapter 108 of the Laws of 1908. Such municipalities shall continue to enjoy the form of government now enjoyed by them, and each shall be possessed of all rights, powers, privileges and immunities granted and conferred by Chapter 108 of the Laws of 1908. The mayor and commissioners of all municipalities now operating under Chapter 108 of the Laws of 1908 shall hold their offices for a term of four (4) years, and until their successors are duly elected and qualified. The officers shall qualify and enter upon the discharge of their duties on the first day of July after such general election that is not on a weekend, and shall hold their office for four (4) years, and until their successors are duly elected and qualified.

SOURCES: Codes, 1930, § 2656; 1942, § 3374-58; Laws, 1932, ch. 219; Laws, 1950, ch. 491, § 58; Laws, 2010, ch. 319, § 1, eff July 22, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 22, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 319, § 1.

Amendment Notes — The 2010 amendment, in the last sentence, substituted "first day of July" for "first Monday of July" and inserted "that is not on a weekend."

CHAPTER 7

Council Form of Government

§ 21-7-7. Members of the council; their election and compensation.

JUDICIAL DECISIONS

2. Relationship to other laws.

In a 42 U.S.C.S. § 1983 case in which a contractor and its assignee sued a city following the cancellation of a contract which had been extended for 24 months by the former mayor and board of alderman (board) and cancelled by the new mayor and board, the contractor and its assignee unsuccessfully argued that Miss. Code Ann. § 21-7-7 authorized the original board to agree to the term extension. Under Miss. Code Ann. § 31-7-13(n)(i), the contract extension was an ultra vires act in the sense that the former mayor and board could not legally agree to bind the new mayor and board to the contract. ECO Res., Inc. v. City of Horn Lake, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 55280 (N.D. Miss. June 11, 2009), affirmed by 379 Fed. Appx. 326, 2010 U.S. App. LEXIS 10183 (5th Cir. Miss. 2010).

§ 21-7-9. Meetings of council; quorum; voting.

(1) Regular public meetings of the council shall be held on the first Tuesday after the first Monday in January after the election of the members of the council and monthly thereafter on the first Tuesday in each month. When a regular meeting of the council shall fall upon a holiday, the council shall meet the following day. Special meetings may be called at any time by the mayor or by three (3) members of the council. At any and all meetings of the council, five (5) members thereof shall constitute a quorum. The quorum required by this section may be established by teleconference or video means as provided in Section 25-41-5(2)(b). The affirmative vote of a majority of the members of the quorum at any meeting shall be necessary to adopt any motion, resolution, or ordinance or to pass any measure whatever unless otherwise provided in this chapter. Upon every vote taken by the council the yeas and nays shall be called and recorded and every motion, resolution, or ordinance shall be reduced to writing before the vote is taken thereon. Upon request of one or more council members, any motion, resolution or ordinance shall be read by the clerk before the vote is taken thereon.

(2) The council may, pursuant to Section 21-17-17, set a day other than Tuesday for the holding of its regular monthly meeting.

SOURCES: Codes, 1942, § 3825.7-04; Laws, 1948, ch. 382, § 4; Laws, 1973, ch. 324, § 4; Laws, 1979, ch. 403, § 4; Laws, 1987, ch. 503, § 2; Laws, 2012, ch. 442, § 4, eff September 20, 2012 (the date the United States Attorney General determined the amendment of this section was not subject to Section 5 of the Voting Rights Act of 1965.)

Editor's Note — Laws of 2012, ch. 442, §§ 7 and 8 provide:

"SECTION 7. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 8. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated September 20, 2012, the United States Attorney General determined that the amendments to this section by Chapter 442, Laws of 2012, were not subject to preclearance under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Amendment Notes — The 2012 amendment added the fifth sentence in (1).

CHAPTER 8

Mayor-Council Form of Government

SEC.

§ 21-8-7. Election of mayor and council members; reapportionment; vacancies; offices; clerical assistance and expenses.

(1) Each municipality operating under the mayor-council form of government shall be governed by an elected council and an elected mayor. Other officers and employees shall be duly appointed pursuant to this chapter, general law or ordinance.

(2) Except as otherwise provided in subsection (4) of this section, the mayor and council members shall be elected by the voters of the municipality at a regular municipal election held on the first Tuesday after the first Monday in June as provided in Section 21-11-7, and shall serve for a term of four (4) years beginning on the first day of July next following the election that is not on a weekend.

(3) The terms of the initial mayor and council members shall commence at the expiration of the terms of office of the elected officials of the municipality serving at the time of adoption of the mayor-council form.

(4)(a) The council shall consist of five (5), seven (7) or nine (9) members. In the event there are five (5) council members, the municipality shall be divided into either five (5) or four (4) wards. In the event there are seven (7) council members, the municipality shall be divided into either seven (7), six (6) or five (5) wards. In the event there are nine (9) council members, the municipality shall be divided into seven (7) or nine (9) wards. If the municipality is divided into fewer wards than it has council members, the other council member or members shall be elected from the municipality at large. The total number of council members and the number of council members elected from wards shall be established by the petition or petitions presented pursuant to Section 21-8-3. One (1) council member shall be elected from each ward by the voters of that ward. Council members elected to represent wards must be residents of their wards at the time of qualification for election, and any council member who removes the member's residence from the municipality or from the ward from which elected shall vacate that office. However, any candidate for council member who is properly qualified as a candidate under applicable law shall be deemed to be qualified as a candidate in whatever ward the member resides if the ward has changed after the council has redistricted the municipality as provided in paragraph (c)(ii) of this subsection (4), and if the wards have been so changed, any person may qualify as a candidate for council member, using the person's existing residence or by changing the person's residence, not less than fifteen (15) days before the first party primary or special party primary, as the case may be, notwithstanding any other residency or qualification requirements to the contrary.

(b) The council or board existing at the time of the adoption of the mayor-council form of government shall designate the geographical boundaries of the wards within one hundred twenty (120) days after the election in which the mayor-council form of government is selected. In designating the

geographical boundaries of the wards, each ward shall contain, as nearly as possible, the population factor obtained by dividing the municipality's population as shown by the most recent decennial census by the number of wards into which the municipality is to be divided.

(c)(i) It shall be the mandatory duty of the council to redistrict the municipality by ordinance, which ordinance may not be vetoed by the mayor, within six (6) months after the official publication by the United States of the population of the municipality as enumerated in each decennial census, and within six (6) months after the effective date of any expansion of municipal boundaries; however, if the publication of the most recent decennial census or effective date of an expansion of the municipal boundaries occurs six (6) months or more before the first party primary of a general municipal election, then the council shall redistrict the municipality by ordinance not less than sixty (60) days before the first party primary.

(ii) If the publication of the most recent decennial census occurs less than six (6) months before the first primary of a general municipal election, the election shall be held with regard to the existing defined wards; reapportioned wards based on the census shall not serve as the basis for representation until the next regularly scheduled election in which council members shall be elected.

(d) If annexation of additional territory into the municipal corporate limits of the municipality occurs less than six (6) months before the first party primary of a general municipal election, the council shall, by ordinance adopted within three (3) days of the effective date of the annexation, assign the annexed territory to an adjacent ward or wards so as to maintain as nearly as possible substantial equality of population between wards; any subsequent redistricting of the municipality by ordinance as required by this chapter shall not serve as the basis for representation until the next regularly scheduled election for municipal council members.

(5) Vacancies occurring in the council shall be filled as provided in Section 23-15-857.

(6) The mayor shall maintain an office at the city hall. The council members shall not maintain individual offices at the city hall; however, in a municipality having a population of one hundred thousand (100,000) and above according to the latest federal decennial census, council members may have individual offices in the city hall. Clerical work of council members in the performance of the duties of their office shall be performed by municipal employees or at municipal expense, and council members shall be reimbursed for the reasonable expenses incurred in the performance of the duties of their office.

SOURCES: Laws, 1973, ch. 328, § 4; Laws, 1974, ch. 336 § 1; Laws, 1976, ch. 355, § 4; Laws, 1977, ch. 310; Laws, 1980, ch. 373; Laws, 1987, ch. 509, § 1; Laws, 1990, ch. 304, § 1; Laws, 1994, ch. 358, § 1; Laws, 2001, ch. 302, § 1; Laws, 2010, ch. 319, § 2; Laws, 2011, ch. 496, § 1, eff from and after passage (approved Apr. 6, 2011.)

Editor's Note — By letter dated July 22, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 319, § 2.

Amendment Notes — The 2010 amendment, in (2), substituted "first day of July" for "first Monday of July" and added "that is not on a weekend"; and substituted "paragraph (c)(ii)" for "subparagraph (c)(ii)" in the next-to-last sentence of (4)(a).

The 2011 substituted "council members" for "councilmen" throughout; in (6), substituted "however, in a municipality having a population of one hundred thousand (100,000) and above according to the latest federal decennial census" for "provided, however, that in municipalities with populations of one hundred ninety thousand (190,000) and above"; and made minor stylistic changes.

§ 21-8-11. Council officers; meetings; quorum; voting; council members shall not serve as members of commissions or boards under their control.

(1) During the first council meeting of a new council, the council shall elect one (1) member as president of the council and one (1) of its other members as vice president, both of whom shall serve at the pleasure of the council. The president shall preside at all council meetings. In the event of the president's absence or disability, the vice president shall act as president. In the event of the absence of the president and vice president, a presiding officer shall be designated by majority vote of the council to serve during such meeting. All councilmen, including the president, shall have the right to vote in the council at all times, even when serving as acting mayor.

(2) Regular public meetings of the council shall be held on the first Tuesday after the first day of July after the election of the members of the council that is not on a weekend and at least monthly thereafter on the first Tuesday after the first Monday in each month, or at such other times as the council by order may set. Special meetings may be called at any time by the mayor or a majority of the members of the council. At any and all meetings of the council, a majority of the members thereof shall constitute a quorum and the affirmative vote of a majority of the quorum at any meeting shall be necessary to adopt any motion, resolution or ordinance, or to pass any measure whatever unless otherwise provided in this chapter. The quorum required by this section may be established by teleconference or video means as provided in Section 25-41-5(2)(b). Upon every vote taken by the council, the yeas and nays shall be recorded and every motion, resolution or ordinance shall be reduced to writing before the vote is taken thereon. Upon request of one or more council members, any motion, resolution or ordinance shall be read by the clerk before the vote is taken thereon.

(3) No councilman shall be a member of any commission or board appointed or designated herein, or serve as a member of any commission or board under their jurisdiction except as otherwise provided by law.

SOURCES: Laws, 1973, ch. 328, § 6; Laws, 1976, ch. 355, § 5; Laws, 1987, ch. 503, § 3; Laws, 2010, ch. 319, § 5; Laws, 2012, ch. 442, § 5, eff September 20, 2012 (the date the United States Attorney General determined that the amend-

ment of this section was not subject to Section 5 of the Voting Rights Act of 1965)

Editor's Note — By letter dated July 22, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 319, § 5.

Laws of 2012, ch. 442, §§ 7 and 8 provide:

"SECTION 7. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 8. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated September 20, 2012, the United States Attorney General determined that the amendments to this section by Chapter 442, Laws of 2012, were not subject to preclearance under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Amendment Notes — The 2010 amendment, in (2), substituted "first day of July" for "first Monday of July" and inserted "that is not on a weekend."

The 2012 amendment in (2), substituted "quorum" for "members present" preceding "at any meeting shall be necessary to adopt" in the third sentence, and added the fourth sentence.

§ 21-8-13. General powers and duties of council.

ATTORNEY GENERAL OPINIONS

A city council has no "investigative powers" over a public school district and is without authority to hire an outside auditor to investigate the district. Campbell, Sept. 16, 2005, A.G. Op. 05-0468.

Reading Sections 21-8-13(4) and 21-8-27 in pari materia, individual city council members can legally request information and advice from any municipal employee, and if such employee refuses to voluntarily supply the requested information, the council as a whole can compel a response. Crisler, Mar. 24, 2006, A.G. Op. 06-0073.

There is no conflict between Sections 21-8-13 and 21-8-27 since the two statutes address different types of communications by the city council with municipal employees. Magee, June 30, 2006, A.G. Op. 06-0274.

§ 21-8-15. Mayor to exercise executive power.

ATTORNEY GENERAL OPINIONS

A town that collects it own garbage fees is advised to provide any persons delinquent in payment of fees procedural due process, including notice and an opportunity for a hearing, prior to submitting their names to the county tax collector. Childers, Mar. 24, 2006, A.G. Op. 06-0038.

Nothing in state law would prohibit a mayor from initiating or proposing the formation of an advisory body to advise the mayor in post-Hurricane Katrina rebuilding efforts. Fitzpatrick, Mar. 24, 2006, A.G. Op. 06-0032.

§ 21-8-17. General powers and duties of mayor; approval of ordinances.

ATTORNEY GENERAL OPINIONS

A mayor's authority to make other recommendations to the city council, includes recommending proposed ordinances. Fitzpatrick, Mar. 24, 2006, A.G. Op. 06-0032.

Nothing in Section 21-8-17 or any other legal authority can be interpreted to grant the mayor of a mayor-council municipality the authority to ban gun shows by the issuance of an executive order or otherwise. White, June 2, 2006, A.G. Op. 06-0220.

§ 21-8-19. Acting mayor; filling of vacancy in office of mayor.

ATTORNEY GENERAL OPINIONS

Miss. Code Ann. § 21-8-19 requires a mayor who is unable to serve due to absence, disability or other causes to appoint a member of the city council to assume the duties of the mayor. The appointee cannot be a city employee or a group of city employees, however a mayor may delegate certain powers to city employees in the ordinary course of business. When a mayor is unable to serve for sixty consecutive days, the city council is required to appoint one of its members as acting mayor and may be forced to do so by a writ of mandamus. McLemore, February 23, 2007, A.G. Op. #07-00087, 2007 Miss. AG LEXIS 32.

§ 21-8-21. Mayor and councilmen to be qualified electors of city; compensation; overtime to members of police and fire departments.

ATTORNEY GENERAL OPINIONS

Only the city council in a mayor/council form of government has the authority to issue employee pay increases. Taylor, Sept. 15, 2006, A.G. Op. 06-0437.

§ 21-8-23. Municipal departments; surety bond.

(1) The municipality may have a department of administration and such other departments as the council may establish by ordinance. All of the administrative functions, powers and duties of the municipality shall be allocated and assigned among and within such departments.

(2) Each department shall be headed by a director, who shall be appointed by the mayor and confirmed by an affirmative vote of a majority of the council present and voting at any such meeting. Each director shall serve during the term of office of the mayor appointing him, and until the appointment and qualification of his successor.

(3) The mayor may, in his discretion, remove the director of any department. Directors of departments shall be excluded from the coverage of any ordinance or general law providing for a civil service system in the municipality; provided, however, all individuals serving as heads of departments at the

time of the municipality's adoption of the mayor-council form as described in this chapter shall continue to be covered by the provisions of the civil service system in effect at the time the mayor-council form is adopted.

(4) Directors of departments shall appoint subordinate officers and employees within their respective departments and may, with approval of the mayor, remove such officers and employees subject to the provisions of any ordinance establishing a civil service system where that system is effective in the municipality, or other general law; provided, however, that the council may provide by ordinance for the appointment and removal of specific boards or commissions by the mayor.

(5) Whenever the city council is authorized by any provision of general law to appoint the members of any board, authority or commission, such power of appointment shall be deemed to vest in the mayor with the confirmation of an affirmative vote of a majority of the council present and voting at any meeting.

(6) The council shall also require all officers and employees handling or having the custody of any of the public funds of such municipality to give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in an amount to be determined by the council (which shall not be less than Fifty Thousand Dollars ($50,000.00)), the premium on which bonds shall be paid by the city.

SOURCES: Laws, 1973, ch. 328, § 12; Laws, 1976, ch. 355, § 10; Laws, 1986, ch. 458, § 25; Laws, 1987, ch. 509, § 6; Laws, 2009, ch. 467, § 8, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment substituted "Fifty Thousand Dollars ($50,000.00)" for "Ten Thousand Dollars ($10,000.00)" in (6).

JUDICIAL DECISIONS

3. Department directors.

Trial court properly granted council members' petition for a writ of mandamus directing a reelected mayor to resubmit department directors for approval to the council pursuant to Miss. Code Ann. § 21-8-23(2) where § 21-8-23(2) required that the mayor resubmit directors for approval by the council at the beginning of the new term of office, even if a director was a holdover from the previous term and had been previously approved by the council. DuPree v. Carroll, 967 So. 2d 27 (Miss. 2007).

ATTORNEY GENERAL OPINIONS

An "acting" or interim director must meet the same qualifications and be confirmed in the same manner as a permanent director. Campbell, Oct. 17, 2005, A.G. Op. 05-0467.

The intent of Section 21-8-23 is that a mayor shall appoint department directors within a reasonable time after taking office. Carroll, Feb. 24, 2006, A.G. Op. 06-0013.

In a mayor/council form of municipal government, a mayor, including one who is re-elected to a new four-year term of office, must submit his appointees to director positions to the city council for confirmation, even if the appointees are

the same individuals who served as department directors during the prior term. DuPree, Feb. 24, 2006, A.G. Op. 06-0058.

§ 21-8-27. Control of mayor and his subordinates by council.

ATTORNEY GENERAL OPINIONS

Reading Sections 21-8-13(4) and 21-8-27 in pari materia, individual city council members can legally request information and advice from any municipal employee, and if such employee refuses to voluntarily supply the requested information, the council as a whole can compel a response. Crisler, Mar. 24, 2006, A.G. Op. 06-0073.

There is no conflict between Sections 21-8-13 and 21-8-27 since the two statutes address different types of communications by the city council with municipal employees. Magee, June 30, 2006, A.G. Op. 06-0274.

CHAPTER 9

Council-Manager Plan of Government

SEC.

§ 21-9-9. Procedure for repeal of council-manager plan.

ATTORNEY GENERAL OPINIONS

A municipality not having a shelter for animals may not take custody of animals running at large unless it makes other arrangements for impounding the animals, such as contracting with a nonprofit entity or another municipality to provide shelter services. Redmond, Aug. 26, 2005, A.G. Op. 05-0447.

§ 21-9-15. Municipal council; election of councilmen and mayor; terms.

ATTORNEY GENERAL OPINIONS

For purposes of application of the separation of powers doctrine, under a council-manager form of government, a council member is an officer in the legislature branch of government. Tynes, July 27, 2006, A.G. Op. 06-0277.

§ 21-9-21. Appointment of officials and employees of city other than councilmen and mayor; surety bond.

In a city in which the council-manager plan of government is in effect under the provisions of this chapter, no city official or employee shall be elected

by the voters except members of the council and the mayor. All other officials and employees shall be appointed as hereinafter provided.

The city council shall require all officers and employees handling or having the custody of any of the public funds of such municipality to give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in an amount to be determined by the council (which shall not be less than Fifty Thousand Dollars ($50,000.00)), the premium on which bonds shall be paid by the city.

SOURCES: Codes, 1942, § 3825.5-13; Laws, 1948, ch. 385, § 13; Laws, 1950, ch. 503, § 1; Laws, 1986, ch. 458, § 26; Laws, 1988, ch. 488, § 5; Laws, 2009, ch. 467, § 9, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment substituted "Fifty Thousand Dollars ($50,000.00)" for "Ten Thousand Dollars ($10,000.00)" near the end of the second paragraph.

§ 21-9-25. City manager; choosing thereof.

The first city council elected under the provisions of this chapter shall at its first meeting employ by majority vote of all its members a city manager who shall be the chief administrative officer of the city. The manager shall receive such compensation as the council shall determine, and shall be chosen solely on the basis of his or her experience and administrative qualifications. The manager shall not engage in any other business or profession that conflicts with the duties of the office of city manager so long as such person holds the office of city manager. Before the city manager engages in any other business or profession, the manager shall give notice of such business or profession to the city council. No person elected to the city council shall be eligible for the office of city manager during the term for which the person was elected.

If the office of city manager becomes vacant, the city council shall appoint without delay a new manager or an acting manager to fill the office until a new manager is designated.

In case of the absence or disability of the city manager, the city council may appoint a qualified person to perform the duties of the city manager temporarily.

SOURCES: Codes, 1942, §§ 3825.5-15, 3825.5-20; Laws, 1948, ch. 385, §§ 15, 20; Laws, 2011, ch. 436, § 1, eff from and after passage (approved Mar. 23, 2011.)

Amendment Notes — The 2011 amendment in the first paragraph, rewrote the former second and third sentences as the second sentence; rewrote the third sentence; added the fourth sentence; and made minor stylistic changes.

§ 21-9-29. Duties of city manager.

ATTORNEY GENERAL OPINIONS

A city manager must choose a new employee from the list of those eligible candidates or applicants who have completed the requirements and meet the criteria set forth by the civil service commission rules and regulations. Tynes, Aug. 4, 2006, A.G. Op. 06-0314.

The city manager holds the authority to set and approve minimum job qualifications, requirements and job descriptions for municipal jobs other than those created by the council under Miss. Code Ann. § 21-9-45. A city manager may reject a job candidate list and form a new one using new job requirements, provided that the new job requirements are appropriate and consistent with state law, the proposed action does not violate the Civil Service Commission regulation, and the new list contains candidates that meet the criteria set forth by the Civil Service Commission. Tynes, March 9, 2007, A.G. Op. #07-00092, 2007 Miss. AG LEXIS 97.

§ 21-9-39. Meetings of the council; quorum; voting.

(1) Regular public meetings of the council shall be held on the first Tuesday of each month, at such time of day as the council may provide. When a regular meeting of the council shall fall on a holiday, the council shall meet the following day. Special meetings may be called at any time by the mayor or two (2) councilmen on at least two (2) days' notice to the mayor and each member of the council. A special meeting may also be held at any time by written consent of the mayor and all members of the council. At all meetings of the council, a majority of the members thereof shall constitute a quorum. The quorum required by this section may be established by teleconference or video means as provided in Section 25-41-5(2)(b). The affirmative vote of a majority of all of the members of the council shall be necessary to adopt any motion, resolution or ordinance, or to pass any measure whatever, unless a greater number is provided in this chapter. Upon every vote taken by the council, the yeas and nays shall be called and recorded, and every motion, resolution or ordinance shall be reduced to writing before the vote is taken thereon. Upon request of one or more council members, any motion, resolution or ordinance shall be read by the clerk before the vote is taken thereon. The city or town manager may be appointed only at a regular meeting of the council with no less than a majority of the members, plus one (1), in attendance.

(2) The council may, pursuant to Section 21-17-17, set a day other than Tuesday for the holding of its regular monthly meeting.

SOURCES: Codes, 1942, § 3825.5-28; Laws, 1948, ch. 385, § 28; Laws, 1952, ch. 372, § 15; Laws, 1973, ch. 324, § 3; Laws, 1979, ch. 403, § 5; Laws, 1987, ch. 503, § 4; Laws, 2012, ch. 442, § 6, eff September 20, 2012 (the date the United States Attorney General determined that the amendment of this section was not subject to Section 5 of the Voting Rights Act of 1965).

Editor's Note — Laws of 2012, ch. 442, §§ 7 and 8 provide:

"SECTION 7. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature

subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 8. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated September 20, 2012, the United States Attorney General determined that the amendments to this section by Chapter 442, Laws of 2012, were not subject to preclearance under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Amendment Notes — The 2012 amendment added the sixth sentence in (1).

§ 21-9-45. Reorganization of city government at behest of council.

ATTORNEY GENERAL OPINIONS

The city manager holds the authority to set and approve minimum job qualifications, requirements and job descriptions for municipal jobs other than those created by the council under Miss. Code Ann. § 21-9-45. A city manager may reject a job candidate list and form a new one using new job requirements, provided that the new job requirements are appropriate and consistent with state law, the proposed action does not violate the Civil Service Commission regulation, and the new list contains candidates that meet the criteria set forth by the Civil Service Commission. Tynes, March 9, 2007, A.G. Op. #07-00092, 2007 Miss. AG LEXIS 97.

CHAPTER 13

Ordinances

§ 21-13-1. Authority to pass; penalties.

ATTORNEY GENERAL OPINIONS

Leasing or permitting space on municipal light poles for the location of transmitters for wireless internet service is not the granting of a franchise within the meaning of Sections 21-27-1 et seq. or Section 21-13-1(3). A municipality leasing that space would still be required to receive fair value for the lease to ensure it did not result in an unlawful donation, but upon a finding by the governing authorities that it would be in the best interests of the municipality, would not be required to advertise and solicit bids. Hedglin, June 30, 2006, A.G. Op. 06-0242.

§ 21-13-19. Misdemeanors under state penal laws as criminal offenses against municipalities.

ATTORNEY GENERAL OPINIONS

A municipal court has jurisdiction to hear and decide, without a jury, an alleged violation of Miss. Code Ann. § 97-5-39(1)(a), and to punish offenders as prescribed by law. The penalty for state misdemeanors tried in a municipal court is limited to six months incarceration and/or a $1,000 fine pursuant to Miss Code Ann.

§ 21-13-19. Boutwell, March 16, 2007, A.G. Op. #07-00124, 2007 Miss. AG LEXIS 113.

CHAPTER 15

Officers and Records

SEC.

§ 21-15-1. Term of elected municipal officers.

All officers elected at the general municipal election provided for in Section 23-15-173, shall qualify and enter upon the discharge of their duties on the first day of July after such general election that is not on a weekend, and shall hold their offices for a term of four (4) years and until their successors are duly elected and qualified.

SOURCES: Codes, 1930, § 2597; 1942, § 3374-62; Laws, 1922, ch. 219; Laws, 1928, ch. 184; Laws, 1932, ch. 226; Laws, 1936, ch. 281; Laws, 1950, ch. 491, § 62; Laws, 1986, ch. 458, § 27; Laws, 1988, ch. 488, § 6; Laws, 2010, ch. 319, § 3, eff July 22, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 22, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 319, § 3.

Amendment Notes — The 2010 amendment substituted "Section 23-15-173" for "Section 21-11-7"; substituted "first day of July" for "first Monday of July"; and inserted "that is not on a weekend."

ATTORNEY GENERAL OPINIONS

An incumbent alderman who served for the preceding term in an office for which no candidate has filed a valid qualifying petition for the upcoming term could "hold over" in accordance with Sections 21-15-1 and 25-1-7, until a special election to fill a vacancy is held as required by Section 23-15-857, assuming his bond remains in effect. Wiggins, May 6, 2005, A.G. Op. 05-0216.

§ 21-15-7. Mayor to give information to the governing body.

ATTORNEY GENERAL OPINIONS

An incumbent alderman who served for the preceding term in an office for which no candidate has filed a valid qualifying petition for the upcoming term could "hold over" in accordance with Sections 21-15-1 and 25-1-7, until a special election to fill a vacancy is held as required by Section 23-15-857, assuming his bond remains in effect. Wiggins, May 6, 2005, A.G. Op. 05-0216.

§ 21-15-19. Municipal clerk; duties as to dockets records.

JUDICIAL DECISIONS

2. Authority to act.

Where the mayor and board of aldermen held a special session without giving notice and overturned the decision of the board of zoning appeals affirming a building permit in favor of an ice company, the mayor exceeded his authority under Miss. Code Ann. § 21-15-9. The company's right to due process was violated. City of Petal v. Dixie Peanut Co., 994 So. 2d 835 (Miss. Ct. App. 2008), writ of certiorari dismissed by 998 So. 2d 1010, 2008 Miss. LEXIS 683 (Miss. 2008).

§ 21-15-23. Deputy clerk; oath of office; surety bond.

Every city in the State of Mississippi, whether operating under a code charter, a special charter, or commission form of government, acting through its governing authorities, is hereby authorized and empowered, by resolution or ordinance duly adopted, to appoint one or more deputy city clerks, each of whom shall have all of the power and authority that is vested in the city clerk of such city. Such governing authorities shall have the right to pay such salary to such deputy city clerk, or clerks, as may be fixed in the resolution or ordinance appointing such deputy city clerk, but not exceeding the salary paid to the city clerk.

Every deputy city clerk so appointed shall serve at the will and pleasure of said governing authorities and may be removed at any time at the pleasure of such municipal governing authorities, and upon such removal all salaries or fees of such deputy city clerk shall thereupon cease.

Every deputy city clerk, before entering upon the duties of his office, shall take and subscribe the same oath required of the city clerk. The appointment of said deputy city clerk, with the certificate of the oath, shall be filed and preserved in the office of the clerk of the governing authorities of such city. Such deputy city clerk shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in an amount to be determined by the governing authority (which shall be not less than Fifty Thousand Dollars ($50,000.00)).

SOURCES: Codes, 1942, § 3374-99; Laws, 1940, ch. 288; Laws, 1950, ch. 491, § 99; Laws, 1986, ch. 458, § 29; Laws, 1988, ch. 488, § 7; Laws, 2009, ch. 467, § 10, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment substituted "Fifty Thousand Dollars ($50,000.00)" for "Ten Thousand Dollars ($10,000.00)" at the end of the last paragraph.

§ 21-15-25. Municipal attorney; appointment and compensation.

ATTORNEY GENERAL OPINIONS

In a mayor-council municipality the city council has the authority to enact an ordinance requiring the mayor to submit any appointee to the position of municipal attorney to the council for advice and consent. Magee, July 29, 2005, A.G. Op. 05-0390.

Section 21-15-25 does not authorize a municipality to hire additional counsel to represent municipal officers who are in disagreement with a decision of the governing authority. The municipal attorney appointed pursuant to Section 21-15-25 represents the municipality, not one or more officers. Lawrence, July 26, 2006, A.G. Op. 06-0257.

§ 21-15-33. Municipal minutes.

JUDICIAL DECISIONS

1. In general.

Buyer's appeal of the city's decision not to sign his bill of exceptions was filed outside the ten-day period allowed by Miss. Code Ann. § 11-51-75; pursuant to Miss. Code Ann. § 21-15-33, the ten-day time period for appeal began when the city adjourned the meeting on September 11, 2007, after making a decision about the property. Rankin Group, Inc. v. City of Richland, 8 So. 3d 259 (Miss. Ct. App. 2009).

ATTORNEY GENERAL OPINIONS

There are no provisions clearly specifying what occurs upon failure of municipal governing authorities to comply with the requirement to approve minutes within 30 days of the meeting. Wiggins, July 29, 2005, A.G. Op. 05-0385.

The approval of minutes is an act which is effective immediately at the time of the meeting, without the necessity of awaiting the approval of the official minutes of that meeting. Wiggins, Apr. 21, 2006, A.G. Op. 06-0135.

CHAPTER 17

General Powers

SEC.

§ 21-17-1. General grant of powers.

(1) Every municipality of this state shall be a municipal corporation and shall have power to sue and be sued; to purchase and hold real estate, either within or without the corporate limits, for all proper municipal purposes, including parks, cemeteries, hospitals, schoolhouses, houses of correction, waterworks, electric lights, sewers and other proper municipal purposes; to purchase and hold personal property for all proper municipal purposes; to sell or dispose of personal property or real property owned by it consistent with

Section 17-25-25; to acquire equipment and machinery by lease-purchase agreement and to pay interest thereon, if contracted, when needed for proper municipal purposes; and to sell and convey any real property owned by it, and make such order respecting the same as may be deemed conducive to the best interest of the municipality, and exercise jurisdiction over the same.

(2)(a) In case any of the real property belonging to a municipality shall cease to be used for municipal purposes, the governing authority of the municipality may sell, convey or lease the same on such terms as the municipal authority may elect. In case of a sale on a credit, the municipality shall charge appropriate interest as contracted and shall have a lien on the same for the purchase money, as against all persons, until paid and may enforce the lien as in such cases provided by law. The deed of conveyance in such cases shall be executed in the name of the municipality by the governing authority of the municipality pursuant to an order entered on the minutes. In any sale or conveyance of real property, the municipality shall retain all mineral rights that it owns, together with the right of ingress and egress to remove same. Except as otherwise provided in this section, before any such lease, deed or conveyance is executed, the governing authority of the municipality shall publish at least once each week for three (3) consecutive weeks, in a public newspaper of the municipality in which the real property is located, or if no newspaper be published as such, then in a newspaper having general circulation therein, the intention to lease or sell, as the case may be, the municipally owned real property and to accept sealed competitive bids for the leasing or sale. The governing authority of the municipality shall thereafter accept bids for the lease or sale and shall award the lease or sale to the highest bidder in the manner provided by law. However, whenever the governing authority of the municipality shall find and determine, by resolution duly and lawfully adopted and spread upon its minutes (i) that any municipally owned real property is no longer needed for municipal or related purposes and is not to be used in the operation of the municipality, (ii) that the sale of such property in the manner otherwise provided by law is not necessary or desirable for the financial welfare of the municipality, and (iii) that the use of such property for the purpose for which it is to be sold, conveyed or leased will promote and foster the development and improvement of the community in which it is located and the civic, social, educational, cultural, moral, economic or industrial welfare thereof, the governing authority of the municipality shall be authorized and empowered, in its discretion, to sell, convey or lease same for any of the purposes set forth herein without having to advertise for and accept competitive bids.

(b) In any case in which a municipality proposes to sell, convey or lease real property under the provisions of this subsection (2) without advertising for and accepting competitive bids, the governing authority may sell, convey or lease the property as follows:

(i) Consideration for the purchase, conveyance or lease of the property shall be not less than the average of the fair market price for such property as determined by at least two (2) professional property apprais-

ers selected by the municipality and approved by the purchaser or lessee. Appraisal fees shall be shared equally by the municipality and the purchaser or lessee;

(ii) The governing authority of a municipality may contract for the professional services of a Mississippi licensed real estate broker to assist the municipality in the marketing and sale or lease of the property, and may provide the broker reasonable compensation for services rendered to be paid from the sale or lease proceeds. The reasonable compensation shall not exceed the usual and customary compensation for similar services within the municipality; or

(iii) The governing authority of a municipality may lease property of less than one thousand five hundred (1,500) square feet to any person or legal entity by having two (2) appraisals establish the fair market value of the lease, and on such other terms and conditions as the parties may agree, such lease being lawfully adopted and spread upon its official minutes.

(3) Whenever the governing authority of the municipality shall find and determine by resolution duly and lawfully adopted and spread upon the minutes that municipally owned real property is not used for municipal purposes and therefore surplus as set forth in subsection (2) of this section:

(a)(i) Except as otherwise provided in subparagraph (ii) of this paragraph (a), the governing authority may donate such lands to a bona fide not-for-profit civic or eleemosynary corporation organized and existing under the laws of the State of Mississippi and granted tax-exempt status by the Internal Revenue Service and may donate such lands and necessary funds related thereto to the public school district in which the land is situated for the purposes set forth herein. Any deed or conveyance executed pursuant hereto shall contain a clause of reverter providing that the bona fide not-for-profit corporation or public school district may hold title to such lands only so long as they are continued to be used for the civic, social, educational, cultural, moral, economic or industrial welfare of the community, and that title shall revert to the municipality in the event of the cessation of such use for a period of two (2) years. In any such deed or conveyance, the municipality shall retain all mineral rights that it owns, together with the right of ingress and egress to remove same;

(ii) If the governing authority of a municipality with a total population of greater than forty thousand (40,000) but not more than forty-two thousand five hundred (42,500) according to the 2010 federal decennial census, donates real property to a bona fide not-for-profit civic or eleemosynary corporation and such civic or eleemosynary corporation commits Two Million Dollars ($2,000,000.00) to renovate or make capital improvements to the property by an agreement between a certain state institution of higher learning and the civic or eleemosynary corporation, then the clause of reverter required by this paragraph shall provide that title of such real property shall revert 1. to the bona fide not-for-profit civic or eleemosynary corporation, if a certain state institution of higher learning

ceases to use the property for the purposes required by this paragraph (a) for donated lands, or 2. to the municipality, if a certain state institution of higher learning ceases to use the property for the purposes required by this paragraph (a) and the not-for-profit civic or eleemosynary corporation or its successor ceases to exist;

(b)(i) The governing authority may donate such lands to a bona fide not-for-profit corporation (such as Habitat for Humanity) which is primarily engaged in the construction of housing for persons who otherwise can afford to live only in substandard housing. In any such deed or conveyance, the municipality shall retain all mineral rights that it owns, together with the right of ingress and egress to remove same;

(ii) In the event the governing authority does not wish to donate title to such lands to the bona fide not-for-profit civic or eleemosynary corporation, but wishes to retain title to the lands, the governing authority may lease the lands to a bona fide not-for-profit corporation described in paragraph (a) or this paragraph (b) for less than fair market value;

(c) The governing authority may donate any municipally owned lot measuring twenty-five (25) feet or less along the frontage line as follows: the governing authority may cause the lot to be divided in half along a line running generally perpendicular to the frontage line and may convey each one-half (½) of that lot to the owners of the parcels laterally adjoining the municipally owned lot. All costs associated with a conveyance under this paragraph (c) shall be paid by the person or entity to whom the conveyance is made. In any such deed or instrument of conveyance, the municipality shall retain all mineral rights that it owns, together with the right of ingress and egress to remove same;

(d) Nothing contained in this subsection (3) shall be construed to prohibit, restrict or to prescribe conditions with regard to the authority granted under Section 17-25-3.

(4) Every municipality shall also be authorized and empowered to loan to private persons or entities, whether organized for profit or nonprofit, funds received from the United States Department of Housing and Urban Development (HUD) under an urban development action grant or a community development block grant under the Housing and Community Development Act of 1974 (Public Law 93-383), as amended, and to charge interest thereon if contracted, provided that no such loan shall include any funds from any revenues other than the funds from the United States Department of Housing and Urban Development; to make all contracts and do all other acts in relation to the property and affairs of the municipality necessary to the exercise of its governmental, corporate and administrative powers; and to exercise such other or further powers as are otherwise conferred by law.

(5)(a) The governing authority of any municipality may establish an employer-assisted housing program to provide funds to eligible employees to be used toward the purchase of a home. This assistance may be applied toward the down payment, closing costs or any other fees or costs associated with the purchase of a home. The housing assistance may be in the form of

a grant, forgivable loan or repayable loan. The governing authority of a municipality may contract with one or more public or private entities to provide assistance in implementing and administering the program and shall adopt rules and regulations regarding the eligibility of a municipality for the program and for the implementation and administration of the program. However, no general funds of a municipality may be used for a grant or loan under the program.

(b) Participation in the program established under this subsection (5) shall be available to any eligible municipal employee as determined by the governing authority of the municipality. Any person who receives financial assistance under the program must purchase a house and reside within certain geographic boundaries as determined by the governing authority of the municipality.

(c) If the assistance authorized under this subsection (5) is structured as a forgivable loan, the participating employee must remain as an employee of the municipality for an agreed upon period of time, as determined by the rules and regulations adopted by the governing authority of the municipality, in order to have the loan forgiven. The forgiveness structure, amount of assistance and repayment terms shall be determined by the governing authority of the municipality.

(6) The governing authority of any municipality may contract with a private attorney or private collection agent or agency to collect any type of delinquent payment owed to the municipality, including, but not limited to, past-due fees, fines and other assessments, or with the district attorney of the circuit court district in which the municipality is located to collect any delinquent fees, fines and other assessments. Any such contract debt may provide for payment contingent upon successful collection efforts or payment based upon a percentage of the delinquent amount collected; however, the entire amount of all delinquent payments collected shall be remitted to the municipality and shall not be reduced by any collection costs or fees. Any private attorney or private collection agent or agency contracting with the municipality under the provisions of this subsection shall give bond or other surety payable to the municipality in such amount as the governing authority of the municipality deems sufficient. Any private attorney with whom the municipality contracts under the provisions of this subsection must be a member in good standing of The Mississippi Bar. Any private collection agent or agency with whom the municipality contracts under the provisions of this subsection must meet all licensing requirements for doing business in the State of Mississippi. Neither the municipality nor any officer or employee of the municipality shall be liable, civilly or criminally, for any wrongful or unlawful act or omission of any person or business with whom the municipality has contracted under the provisions of this subsection. The Mississippi Department of Audit shall establish rules and regulations for use by municipalities in contracting with persons or businesses under the provisions of this subsection. If a municipality uses its own employees to collect any type of delinquent payment owed to the municipality, then from and after July 1,

2000, the municipality may charge an additional fee for collection of the delinquent payment provided the payment has been delinquent for ninety (90) days. The collection fee may not exceed twenty-five percent (25%) of the delinquent payment if the collection is made within this state and may not exceed fifty percent (50%) of the delinquent payment if the collection is made outside this state. In conducting collection of delinquent payments, the municipality may utilize credit cards or electronic fund transfers. The municipality may pay any service fees for the use of such methods of collection from the collection fee, but not from the delinquent payment. There shall be due to the municipality from any person whose delinquent payment is collected under a contract executed as provided in this subsection an amount, in addition to the delinquent payment, of not to exceed twenty-five percent (25%) of the delinquent payment for collections made within this state, and not to exceed fifty percent (50%) of the delinquent payment for collections made outside of this state.

(7) In addition to such authority as is otherwise granted under this section, the governing authority of any municipality may expend funds necessary to maintain and repair, and to purchase liability insurance, tags and decals for, any personal property acquired under the Federal Excess Personal Property Program that is used by the local volunteer fire department.

(8) In addition to the authority to expend matching funds under Section 21-19-65, the governing authority of any municipality, in its discretion, may expend municipal funds to match any state, federal or private funding for any program administered by the State of Mississippi, the United States government or any nonprofit organization that is exempt under 26 USCS Section 501(c)(3) from paying federal income tax.

(9) The governing authority of any municipality that owns and operates a gas distribution system, as defined in Section 21-27-11(b), and the governing authority of any public natural gas district are authorized to contract for the purchase of the supply of natural gas for a term of up to ten (10) years with any public nonprofit corporation which is organized under the laws of this state or any other state.

(10) The governing authority of any municipality may perform and exercise any duty, responsibility or function, may enter into agreements and contracts, may provide and deliver any services or assistance, and may receive, expend and administer any grants, gifts, matching funds, loans or other monies, in accordance with and as may be authorized by any federal law, rule or regulation creating, establishing or providing for any program, activity or service. The provisions of this subsection shall not be construed as authorizing any municipality or the governing authority of such municipality to perform any function or activity that is specifically prohibited under the laws of this state or as granting any authority in addition to or in conflict with the provisions of any federal law, rule or regulation.

(11)(a) In addition to such authority as is otherwise granted under this section, the governing authority of a municipality, in its discretion, may sell, lease, donate or otherwise convey property to any person or legal entity

without public notice, without having to advertise for and accept competitive bids and without appraisal, with or without consideration, and on such terms and conditions as the parties may agree if the governing authority finds and determines, by resolution duly and lawfully adopted and spread upon its official minutes:

(i) The subject property is real property acquired by the municipality:

1. By reason of a tax sale;
2. Because the property was abandoned or blighted; or
3. In a proceeding to satisfy a municipal lien against the property;

(ii) The subject property is blighted and is located in a blighted area;

(iii) The subject property is not needed for governmental or related purposes and is not to be used in the operation of the municipality;

(iv) That the sale of the property in the manner otherwise provided by law is not necessary or desirable for the financial welfare of the municipality; and

(v) That the use of the property for the purpose for which it is to be conveyed will promote and foster the development and improvement of the community in which it is located or the civic, social, educational, cultural, moral, economic or industrial welfare thereof; the purpose for which the property is conveyed shall be stated.

(b) Any deed or instrument of conveyance executed pursuant to the authority granted under this subsection shall contain a clause of reverter providing that title to the property will revert to the municipality if the person or entity to whom the property is conveyed does not fulfill the purpose for which the property was conveyed and satisfy all conditions imposed on the conveyance within two (2) years of the date of the conveyance.

(c) In any such deed or instrument of conveyance, the municipality shall retain all mineral rights that it owns, together with the right of ingress and egress to remove same.

(12) The governing authority of any municipality may enter into agreements and contracts with any housing authority, as defined in Section 43-33-1, to provide extra police protection in exchange for the payment of compensation or a fee to the municipality.

(13) The governing authority of any municipality may reimburse the cost of an insured's deductible for an automobile insurance coverage claim if the claim has been paid for damages to the insured's property arising from the negligence of a duly authorized officer, agent, servant, attorney or employee of the municipality in the performance of his or her official duties, and the officer, agent, servant, attorney or employee owning or operating the motor vehicle is protected by immunity under the Mississippi Tort Claims Act, Section 11-46-1 et seq.

(14) The powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law, and nothing contained in this section shall be construed to prohibit, or to prescribe conditions concerning, any practice or practices authorized under any other law.

SOURCES: Codes, 1892, § 2923; 1906, § 3314; Hemingway's 1917, § 5811; 1930, § 2391; 1942, § 3374-112; Laws, 1950, ch. 491, § 112; Laws, 1957, Ex. ch. 13, § 4; Laws, 1960, ch. 425; Laws, 1966, ch. 592, § 1; Laws, 1980, ch. 408; Laws, 1981, ch. 388, § 1; Laws, 1982, ch. 444; Laws, 1992, ch. 335 § 1; Laws, 1993, ch. 455, § 2; Laws, 1994, ch. 639, § 1; Laws, 1995, ch. 593, § 1; Laws, 1998, ch. 452, § 1; Laws, 1999, ch. 392, § 1; Laws, 2000, ch. 515, § 3; Laws, 2001, ch. 590, § 1; Laws, 2003, ch. 483, § 4; Laws, 2004, ch. 440, § 1; Laws, 2004, ch. 560, § 2; Laws, 2007, ch. 487, § 1; Laws, 2007, ch. 538, § 1; Laws, 2010, ch. 415, § 1; Laws, 2010, ch. 433, § 1; Laws, 2010, ch. 517, § 4; Laws, 2011, ch. 534, § 1; Laws, 2012, ch. 402, § 1; Laws, 2012, ch. 499, § 3; Laws, 2013, ch. 364, § 3; Laws, 2014, ch. 370, § 1; Laws, 2014, ch. 432, § 2, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation inserted the word "and" following the semi-colon in the last item in the list of municipal powers in subsection (1). The Joint Committee ratified the correction at its July 22, 2010, meeting.

Section 4 of Chapter 517, Laws of 2010, effective July 1, 2010 (approved April 14, 2010), amended this section. Section 1 of Chapter 415, Laws of 2010, effective upon passage (approved March 17, 2010), and Section 1 of Chapter 433, Laws of 2010, effective July 1, 2010 (approved March 25, 2010), also amended this section. As set out above, this section reflects the language of Section 4 of Chapter 517, Laws of 2010, which contains language that specifically provides that it supersedes § 21-17-1 as amended by Laws of 2010, chs. 415 and 433.

Section 1 of Chapter 402, Laws of 2012, effective July 1, 2012 (approved April 18, 2012) amended this section. Section 3 of Chapter 497, Laws of 2012, effective July 1, 2012 (approved April 30, 2012) also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 16, 2012, meeting of the Committee.

Section 1 of ch. 370, Laws of 2014, effective July 1, 2014, amended this section. Section 2 of ch. 432, Laws of 2014, effective from and after July 1, 2014, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 24, 2014, meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in (3)(a)(ii) and (b)(ii) by, in (3)(a)(ii), deleting the comma following "donates real property," substituting "shall revert 1. to the bona fide not-for-profit civic or eleemosynary corporation, if a certain state institution of higher learning ceases to use the property for the purposes required by this paragraph (a) for donated lands, or 2." for "shall revert (1) to the bona fide not-for-profit civic or eleemosynary corporation, if a certain state institution of higher learning ceases to use the property for the purposes required by this paragraph (a) for donated lands or (2)," and substituting the semicolon for a period at the end, and in (3)(b)(ii), inserting "this paragraph" following "described in paragraph (a) or." The Joint Committee ratified these corrections at its July 24, 2014, meeting.

Amendment Notes — The first 2010 amendment (ch. 415) deleted (12)(b), which formerly read: "All costs associated with a conveyance under this subsection shall be paid by the person or entity to whom the conveyance is made"; and redesignated former (12)(c) and (12)(d) as (12)(b) and (12)(c), respectively.

The second 2010 amendment (ch. 433) added (13) and (15); and redesignated former (13) as (14).

The third 2010 amendment (ch. 517), in (6), in the first sentence, added the language beginning "and other assessments, or with the district attorney of the circuit court district" through to the end, and made a related change, and in the ninth sentence, substituted "twenty-five percent (25%)" for "fifteen percent (15%)" and "fifty percent (50%)" for "twenty-five percent (25%)"; deleted former (12)(b), which read: "All costs associated with a conveyance under this subsection shall be paid by the person or entity to whom the conveyance is made"; redesignated former (12)(c) and (12)(d) as (12)(b) and (12)(c) respectively; added (13); and redesignated former (13) as (14).

The 2011 amendment added "(i) Except as otherwise provided in subparagraph (ii) of this paragraph (a)" at the beginning of (3)(a)(i); added (3)(a)(ii); and substituted "July 1, 2014" for "July 1, 2011" at the end of (13); and made a minor stylistic change.

The first 2012 amendment (ch. 402), substituted "at least two (2)" for "three (3)" in (2)(b)(i); and added (2)(b)(iii).

The second 2012 amendment (ch. 499), added "to sell or dispose of personal property owned by it consistent with Section 17-25-25" preceding "to acquire equipment and machinery" in (1); deleted former (8), which read: "The governing authority of any municipality may, in its discretion, donate personal property or funds to the public school district or districts located in the municipality for the promotion of educational programs of the district or districts within the municipality," and redesignated the remaining subsections accordingly; and made minor stylistic changes.

The 2013 amendment added "or real property" following "to sell or dispose of personal property" in the first sentence of (1); and made minor stylistic changes.

The first 2014 amendment (ch. 370) deleted the last sentence in (12), which read, "This subsection shall stand repealed from and after July 1, 2014."

The second 2014 amendment (ch. 432) added (13), and redesignated former (13) as (14).

Cross References — Municipality approving a vacation or alteration of map or plat pursuant to the provisions of § 17-1-23 is exempt from sale of surplus real property provisions of this section, see § 17-1-23.

Additional powers of municipalities to acquire, own and lease projects for the purpose of promoting industry and trade, see § 57-3-9.

Authority to establish standard industrial parks and districts, see § 57-5-17.

Right of eminent domain in acquisition of land for standard industrial park, see § 57-5-21.

Governing authorities of municipalities authorized to enter into collection agreements with private attorney, collection agency or others to collect cash appearance bonds from certain defendants, see § 17-25-21.

JUDICIAL DECISIONS

1. In general.
3. Property rights.

1. In general.

H.B. 1671, Reg. Sess. (Miss. 2006), was a private law which enabled the city to obtain municipal parking facilities in exchange for the conveyance of air and development rights; the last sentences of sections 3 and 4 were unconstitutional under Miss. Const. Art. IV, § 87, as exempting the bill from compliance with Miss. Code Ann. §§ 21-17-1 and 31-7-13 and were not merely procedural and minor. Oxford Asset Partners, LLC v. City of Oxford, 970 So. 2d 116 (Miss. 2007).

3. Property rights.

City did not improperly use Miss. Code Ann. § 57-7-1 to bypass the bid process in

Miss. Code Ann. § 21-17-1 because the powers in § 21-17-1(13) were supplemental to other laws. Ball v. Mayor & Bd. of Aldermen, 983 So. 2d 295 (Miss. 2008).

City's sale of property for $500,000 was reasonable because the goal of economic development was not to receive the highest price; a sale or lease under Miss. Code Ann. § 57-7-1 was for good and valuable consideration, but not necessarily for fair market value. Ball v. Mayor & Bd. of Aldermen, 983 So. 2d 295 (Miss. 2008).

ATTORNEY GENERAL OPINIONS

Disposition of property donated to a municipality by a cemetery committee. Eubanks, Apr. 15, 2005, A.G. Op. 05-0178.

A city has the authority to convey or lease to a non-profit corporation a building and the land on which it is located. Collins, Apr. 29, 2005, A.G. Op. 05-0209.

If a city's partnership with a county educational enhancement program would entail participation by the municipality in the programs of the organization and would not simply entail putting up the matching funds for a federal grant, Section 21-17-1 provides the authority to provide those matching funds. Montgomery, May 27, 2005, A.G. Op. 05-0236.

If a town decides not to operate a municipally owned water system, its governing authorities may contract with a private nonprofit water association to operate, maintain and make repairs to the system pursuant to Section 21-27-7; additionally, Section 21-17-1 (1972) would permit the town to sell or lease the improvements. Helmert, Oct. 28, 2005, A.G. Op. 05-0518.

Where a city advertised for bids on property and one of the bidders offered real property instead of a cash payment, the city could accept the property offered, if it makes a finding that the bid offering the property is the highest bid and that such bid is in compliance with the requirements stated in the advertisement by the city. Phillips, Dec. 27, 2005, A.G. Op. 05-0613.

Under the authority of Section 57-7-1, a town may lease surplus real property to a local industry without complying with the provisions of Section 21-17-1. Sennett, Feb. 10, 2006, A.G. Op. 06-0024.

A policy of a municipality establishing a lower fee for use of municipal facilities for charitable benefits than charged for other private uses would be impermissible. As an alternative, however, certain statutes authorize municipal donations to certain types of qualified organizations. Baum, Feb. 17, 2006, A.G. Op. 06-0048.

Governing authorities need not comply with the provisions of Section 21-17-1 for the disposal of surplus real property. Montgomery, Mar. 31, 2006, A.G. Op. 06-0075.

Nothing in the language of Section 21-17-1 prohibits a municipality from dividing a large parcel of surplus real property into smaller tracts so that the sale of each tract may be handled as separate transactions to achieve the highest price for the taxpayer. Shoemake, May 5, 2006, A.G. Op. 06-0164.

A municipality may re-convey real property to an original donor without cost only if the instrument by which the property was originally conveyed to the municipality contained a proper reverter clause. Lawrence, June 9, 2006, A.G. Op. 06-0236.

It is not legally required to follow the procedure set forth in Section 21-17-1 in order to lease space on a municipally owned water tank. Bishop, June 19, 2006, A.G. Op. 06-0221.

A town may, in its discretion, contract to pay a reasonable fee or commission to a licensed real estate broker in consideration for services rendered in connection with the lawful sale of the town's real property. Tach, June 30, 2006, A.G. Op. 06-0273.

Leasing or permitting space on municipal light poles for the location of transmitters for wireless internet service is not the granting of a franchise within the meaning of Sections 21-27-1 et seq. or Section 21-13-1(3). A municipality leasing that space would still be required to receive fair value for the lease to ensure it did not result in an unlawful donation, but upon a finding by the governing authorities that it would be in the best interests of the municipality, would not be required to

advertise and solicit bids. Hedglin, June 30, 2006, A.G. Op. 06-0242.

A city must comply with Section 21-17-1 should it decide to dispose of the fee underlying a dedicated street. Herring, Sept. 11, 2006, A.G. Op. 06-0419.

For purposes of disposing of real property, a natural gas district must follow the provisions of Section 21-17-1. Bates, Nov. 3, 2006, A.G. Op. 06-0557.

When acquiring real property, a governing authority must comply with the provisions of Section 43-37-3 and may, within its discretion, establish a purchase price which exceeds the appraised value of the property when the determined purchase price is commensurate with the fair market value of the property. Shoemake, Nov. 17, 2006, A.G. Op. 06-0570.

Pursuant to Miss. Code Ann. § 21-17-1, a municipality no longer using surplus municipal property but desiring to retain title to it may, instead of donating it, lease the property to a bona fide not-for-profit corporation for less than fair market value without having to comply with competitive-bid requirements, so long as it makes the required factual determinations. Jones, February 16, 2007, A.G. Op. #07-00050, 2007 Miss. AG LEXIS 24.

Under Miss. Code Ann. § 61-5-39, the Tunica County Airport Commission, a joint venture of the Town of Tunica and Tunica County, may dispose of its unused real property by leasing or selling it to a nonprofit organization for use as a homeless shelter, with the consent of the governing authorities of both the town and the county, and using the procedures outlined in Miss. Code Ann. §§ 19-7-3, 21-17-1 or 57-7-1. Dulaney, March 16, 2007, A.G. Op. #07-00125, 2007 Miss. AG LEXIS 107.

§ 21-17-5. Powers of governing authorities.

(1) The governing authorities of every municipality of this state shall have the care, management and control of the municipal affairs and its property and finances. In addition to those powers granted by specific provisions of general law, the governing authorities of municipalities shall have the power to adopt any orders, resolutions or ordinances with respect to such municipal affairs, property and finances which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi, and shall likewise have the power to alter, modify and repeal such orders, resolutions or ordinances. Except as otherwise provided in subsection (2) of this section, the powers granted to governing authorities of municipalities in this section are complete without the existence of or reference to any specific authority granted in any other statute or law of the State of Mississippi. Unless otherwise provided by law, before entering upon the duties of their respective offices, the aldermen or councilmen of every municipality of this state shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty equal to five percent (5%) of the sum of all the municipal taxes shown by the assessment rolls and the levies to have been collectible in the municipality for the year immediately preceding the commencement of the term of office of said alderman or councilman; however, such bond shall not exceed One Hundred Thousand Dollars ($100,000.00). For all municipalities with a population more than two thousand (2,000) according to the latest federal decennial census, the amount of the bond shall not be less than Fifty Thousand Dollars ($50,000.00). Any taxpayer of the municipality may sue on such bond for the use of the municipality, and such taxpayer shall be liable for all costs in case his suit shall

fail. No member of the city council or board of aldermen shall be surety for any other such member.

(2) Unless such actions are specifically authorized by another statute or law of the State of Mississippi, this section shall not authorize the governing authorities of municipalities to (a) levy taxes of any kind or increase the levy of any authorized tax, (b) issue bonds of any kind, (c) change the requirements, practices or procedures for municipal elections or establish any new elective office, (d) change the procedure for annexation of additional territory into the municipal boundaries, (e) change the structure or form of the municipal government, (f) permit the sale, manufacture, distribution, possession or transportation of alcoholic beverages, (g) grant any donation, or (h) without prior legislative approval, regulate, directly or indirectly, the amount of rent charged for leasing private residential property in which the municipality does not have a property interest.

(3) Nothing in this or any other section shall be construed so as to prevent any municipal governing authority from paying any municipal employee not to exceed double his ordinary rate of pay or awarding any municipal employee not to exceed double his ordinary rate of compensatory time for work performed in his capacity as a municipal employee on legal holidays. The governing authority of any municipality shall enact leave policies to ensure that a public safety employee is paid or granted compensatory time for the same number of holidays for which any other municipal employee is paid.

(4) The governing authority of any municipality, in its discretion, may expend funds to provide for training and education of newly elected or appointed municipal officials before the beginning of the term of office or employment of such officials. Any expenses incurred for such purposes may be allowed only upon prior approval of the governing authority. Any payments or reimbursements made under the provisions of this subsection may be paid only after presentation to and approval by the governing authority of the municipality.

SOURCES: Codes, 1892, § 2925; 1906, § 3316; Hemingway's 1917, § 5813; 1930, § 2393; 1942, § 3374-114; Laws, 1950, ch. 491, § 114; Laws, 1985, ch. 487; Laws, 1989, ch. 526, § 1; Laws, 1990, ch. 418, § 1; Laws, 1992, ch. 430 § 1; Laws, 1998, ch. 315, § 1; Laws, 2000, ch. 363, § 2; Laws, 2000, ch. 515, § 2; Laws, 2006, ch. 419, § 1; Laws, 2007, ch. 546, § 2; Laws, 2009, ch. 467, § 11, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment in (1), deleted "the amount of" preceding "One Hundred Thousand Dollars ($100,000.00)" and added the second-to-last sentence.

JUDICIAL DECISIONS

1. In general.

City council was within its discretion to discharge a police chief because the chief allowed public property to be used for private employment in violation of Miss. Code Ann. § 21-17-5(2)(g) and the instructions of a city council and vice mayor, and the chief was provided with notice and a

hearing in accordance with the city code. Patterson v. City of Greenville, 117 So. 3d 630 (Miss. Ct. App. 2013).

ATTORNEY GENERAL OPINIONS

Authority for the donation of city funds to a voluntary relief organization for the benefit of those who suffered from Hurricane Katrina may be found in a number of provisions of the Mississippi Code. Trotter, Sept. 23, 2005, A.G. Op. 05-0484.

The authority of a city council to enact orders, ordinances and resolutions, as established by Section 21-17-5, applies to matters which are properly within the jurisdiction of the legislative branch. As such, a council may not lawfully enact policies with regard to the daily operations of municipal departments, a power which is firmly rooted in the executive branch of government. Smith, Oct. 21, 2005, A.G. Op. 05-0519.

A town may not donate water system improvements to a private community water association. Helmert, Oct. 28, 2005, A.G. Op. 05-0518.

Municipalities are prohibited from making donations absent specific statutory authority to do so. Thomas, Jan. 27, 2006, A.G. Op. 06-0014.

The award of compensatory time or "holiday pay" to employees not actually working on a holiday would constitute an unlawful donation. Kohnke, Apr. 7, 2006, A.G. Op. 06-0123.

As long as the provisions of a municipal ordinance requiring the registration of sex offenders supplement, and do not conflict, with the provisions of Section 45-33-21, a municipality is within the authority granted it by Section 21-17-5 to enact such an ordinance. Gibson, Apr. 21, 2006, A.G. Op. 05-0382.

A municipality may conduct a non-binding referendum on the adoption of zoning. Beckett, Sept. 29, 2006, A.G. Op. 06-0481.

A municipality may adopt an ordinance, consistent with its authority under Section 21-17-5, that permits payroll deduction of union membership dues. Evans, Dec. 13, 2006, A.G. Op. 06-0543.

Although Sections 63-3-201 and 63-9-11 provide that a violation of the rules of the road is a criminal violation, a city is not prohibited from enacting additional ordinances also making disobedience or disregard of a traffic control signal a civil offense. Mitchell, Dec. 13, 2006, A.G. Op. 06-0170.

A County Board of Supervisors can hold a non-binding referendum to ascertain the opinion of citizens of the county concerning a casino proposed by an Indian tribe on lands owned by the tribe in the county, and does not have to wait until the next regular election year. The issue is within the jurisdiction of the Board and justifies the use of the county's home rule powers to call for the referendum, but the Board must first make a finding that the use of public funds for such a referendum is in the county's best interest. Guice, March 7, 2007, A.G. Op. #07-00108, 2007 Miss. AG LEXIS 104.

For the Tunica County Utility District, which is county-owned, to fund the construction of connecting water lines to a privately owned utility company would constitute an unlawful donation under Miss. Code Ann. § 19-3-40 and Miss. Const. of 1890, Art. 4 § 66, unless the private utility gives adequate consideration, which may take into account the value of and cost to replicate the backup service that would be provided to the private utility. Dulaney, March 15, 2007, A.G. Op. #07-00123, 2007 Miss. AG LEXIS 62.

A County Board of Supervisors can hold a non-binding referendum to ascertain the opinion of citizens of the county concerning proposed gaming operations by an Indian tribe on lands owned by the tribe in the county. The issue is within the jurisdiction of the Board and justifies the use of the county's home rule powers to call for the referendum, but the Board must first make a finding that the use of public funds for such a referendum is in the county's best interest. Yancey, March 26, 2007, A.G. Op. #07-00178, 2007 Miss. AG LEXIS 123.

CHAPTER 19

Health, Safety, and Welfare

Sec.

§ 21-19-1. General powers of municipal governing authorities; collection and disposal of garbage and rubbish.

ATTORNEY GENERAL OPINIONS

A municipal governing authority may, upon the proper findings that an organization is club is a social or community service program, waive the regularly assessed tipping fee for use of a landfill. Kerby, Apr. 8, 2005, A.G. Op. 05-0155.

A municipal governing authority may, in its discretion, waive the collection of tipping fees for use of a landfill by municipal and county school districts. Kerby, Apr. 8, 2005, A.G. Op. 05-0155.

Once a fee for the connection of property within a municipality to a sewer has been established, the municipality may not forgive or waive those fees or rates or give a credit for future sewer bills for the equivalent months or years in which a citizen has paid and not been hooked up. Collins, Apr. 29, 2005, A.G. Op. 05-0209.

If a municipality is not operating a garbage collection and disposal system, then the county may designate the area within the municipality as part of the county's solid waste disposal area, assess the same millage as assessed throughout the county, and collect and dispose of the solid waste. Hemphill, Nov. 4, 2005, A.G. Op. 05-0540.

§ 21-19-2. Development of billing and collection system; defraying costs; increase in ad valorem tax; notice; joint and several liability of generator and property owner; liens.

ATTORNEY GENERAL OPINIONS

A town that collects it own garbage fees is advised to provide any persons delinquent in payment of fees procedural due process, including notice and an opportunity for a hearing, prior to submitting their names to the county tax collector. Childers, Mar. 24, 2006, A.G. Op. 06-0038.

§ 21-19-7. Donating to hospitals and benevolent institutions.

ATTORNEY GENERAL OPINIONS

Section 66 of the Mississippi Constitution prohibits a municipality from donating water to a church for any "sectarian purpose". Creekmore, Nov. 22, 2005, A.G. Op. 05-0408.

§ 21-19-11. Determination that property or parcel of land is menace; notification to property owner; hearing; cleaning private property; cost and penalty as assessment against property; appeal.

(1) To determine whether property or parcel of land located within a municipality is in such a state of uncleanliness as to be a menace to the public health, safety and welfare of the community, a governing authority of any municipality shall conduct a hearing, on its own motion, or upon the receipt of a petition signed by a majority of the residents residing within four hundred (400) feet of any property or parcel of land alleged to be in need of the cleaning. Notice shall be provided to the property owner by:

(a) United States mail two (2) weeks before the date of the hearing mailed to the address of the subject property and to the address where the ad valorem tax notice for such property is sent by the office charged with collecting ad valorem tax; and

(b) Posting notice for at least two (2) weeks before the date of a hearing on the property or parcel of land alleged to be in need of cleaning and at city hall or another place in the municipality where such notices are posted.

Any notice required by this section shall include language that informs the property owner that an adjudication at the hearing that the property or parcel of land is in need of cleaning will authorize the municipality to reenter the property or parcel of land for a period of one (1) year after final adjudication without any further hearing if notice is posted on the property or parcel of land and at city hall or another place in the municipality where such notices are generally posted at least seven (7) days before the property or parcel of land is reentered for cleaning. A copy of the required notice mailed and posted as required by this section shall be recorded in the minutes of the governing authority in conjunction with the hearing required by this section.

If, at such hearing, the governing authority shall adjudicate the property or parcel of land in its then condition to be a menace to the public health, safety and welfare of the community, the governing authority, if the owner does not do so himself, shall proceed to clean the land, by the use of municipal employees or by contract, by cutting grass and weeds; filling cisterns; removing rubbish, abandoned or dilapidated fences, outside toilets, abandoned or dilapidated buildings, slabs, personal property, which removal of personal property shall not be subject to the provisions of Section 21-39-21, and other debris; and draining cesspools and standing water

therefrom. The governing authority may by resolution adjudicate the actual cost of cleaning the property and may also impose a penalty not to exceed One Thousand Five Hundred Dollars ($1,500.00) or fifty percent (50%) of the actual cost, whichever is more. The cost and any penalty may become a civil debt against the property owner, and/or, at the option of the governing authority, an assessment against the property. The "cost assessed against the property" means either the cost to the municipality of using its own employees to do the work or the cost to the municipality of any contract executed by the municipality to have the work done, and administrative costs and legal costs of the municipality. For subsequent cleaning within the one-year period after the date of the hearing at which the property or parcel of land was adjudicated in need of cleaning, upon seven (7) days' notice posted both on the property or parcel of land adjudicated in need of cleaning and at city hall or another place in the municipality where such notices are generally posted, and consistent with the municipality's adjudication as authorized in this subsection (1), a municipality may reenter the property or parcel of land to maintain cleanliness without further notice or hearing no more than six (6) times in any twelve-month period with respect to removing abandoned or dilapidated buildings, slabs, dilapidated fences and outside toilets, and no more than twelve (12) times in any twenty-four-month period with respect to cutting grass and weeds and removing rubbish, personal property and other debris on the land, and the expense of cleaning of the property, except as otherwise provided in this section for removal of hazardous substances, shall not exceed an aggregate amount of Twenty Thousand Dollars ($20,000.00) per year, or the fair market value of the property subsequent to cleaning, whichever is more. The aggregate cost of removing hazardous substances will be the actual cost of such removal to the municipality and shall not be subject to the Twenty Thousand Dollar ($20,000.00) limitation provided in this subsection. The governing authority may assess the same penalty for each time the property or land is cleaned as otherwise provided in this section. The penalty provided herein shall not be assessed against the State of Mississippi upon request for reimbursement under Section 29-1-145, nor shall a municipality clean a parcel owned by the State of Mississippi without first giving notice.

(2) If the governing authority declares, by resolution, that the cost and any penalty shall be collected as a civil debt, the governing authority may authorize the institution of a suit on open account against the owner of the property in a court of competent jurisdiction in the manner provided by law for the cost and any penalty, plus court costs, reasonable attorney's fees and interest from the date that the property was cleaned.

(3)(a) If the governing authority declares that the cost and any penalty shall be collected as an assessment against the property, then the assessment above provided for shall be a lien against the property and may be enrolled in the office of the circuit clerk of the county as other judgments are enrolled, and the tax collector of the municipality shall, upon order of the board of governing authorities, proceed to sell the land to satisfy the lien as

now provided by law for the sale of lands for delinquent municipal taxes. The lien against the property shall be an encumbrance upon the property and shall follow title of the property.

(b)(i) All assessments levied under the provisions of this section shall be included with municipal ad valorem taxes and payment shall be enforced in the same manner in which payment is enforced for municipal ad valorem taxes, and all statutes regulating the collection of other taxes in a municipality shall apply to the enforcement and collection of the assessments levied under the provisions of this section, including utilization of the procedures authorized under Sections 17-13-9(2) and 27-41-2.

(ii) All assessments levied under the provisions of this section shall become delinquent at the same time municipal ad valorem taxes become delinquent. Delinquencies shall be collected in the same manner and at the same time delinquent ad valorem taxes are collected and shall bear the same penalties as those provided for delinquent taxes. If the property is sold for the nonpayment of an assessment under this section, it shall be sold in the manner that property is sold for the nonpayment of delinquent ad valorem taxes. If the property is sold for delinquent ad valorem taxes, the assessment under this section shall be added to the delinquent tax and collected at the same time and in the same manner.

(4) All decisions rendered under the provisions of this section may be appealed in the same manner as other appeals from municipal boards or courts are taken.

(5) Nothing contained under this section shall prevent any municipality from enacting criminal penalties for failure to maintain property so as not to constitute a menace to public health, safety and welfare.

SOURCES: Codes, 1930, §§ 2456, 2457; 1942, § 3374-171; Laws, 1922, ch. 220; Laws, 1950, ch. 491, § 171; Laws, 1962, ch. 545; Laws, 1964, ch. 498; Laws, 1966, ch. 593, § 1; Laws, 1971, ch. 360, § 1; Laws, 1976, ch. 335; Laws, 1977, ch. 330; Laws, 1985, ch. 350; Laws, 1987, ch. 321; Laws, 1989, ch. 322, § 1; Laws, 1991, ch. 395, § 1; Laws, 1992, ch. 479 § 1; Laws, 2001, ch. 576, § 1; Laws, 2005, ch. 427, § 1; Laws, 2009, ch. 503, § 1; Laws, 2010, ch. 471, § 1; Laws, 2010, ch. 475, § 1; Laws, 2014, ch. 372, § 1; Laws, 2014, ch. 473, § 1, eff from and after passage (approved Apr. 2, 2014.)

Joint Legislative Committee Note — Section 1 of ch. 471, Laws of 2010, effective July 1, 2010 (approved April 1, 2010), amended this section. Section 1 of ch. 475, Laws of 2010, effective from and after passage (approved April 1, 2010), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 22, 2010, meeting of the Committee.

Section 1 of ch. 372, Laws of 2014, effective July 1, 2014, amended this section. Section 1 of ch. 473, Laws of 2014, effective from and after passage (approved April 2, 2014), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative

Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 24, 2014, meeting of the Committee.

Editor's Note — Laws of 2010, ch. 471, § 2 provides:

"It is the intent of the Legislature that the amendments contained in Section 1 of this bill shall be integrated with the amendments contained in House Bill No. 1412 [ch. 475], 2010 Regular Session, without regard to the effective date of such acts."

Laws of 2010, ch. 475, § 2 provides:

"It is the intent of the Legislature that the amendments contained in Section 1 of this bill shall be integrated with the amendments contained in House Bill No. 1281 [ch. 471], 2010 Regular Session, without regard to the effective date of such acts."

Amendment Notes — The 2009 amendment, in (1), in the first sentence, inserted "as provided in this section" and "and welfare" and made related minor stylistic changes, rewrote the second sentence, in the third sentence, deleted "Thereafter" from the beginning and "at its next regular meeting" following "governing authority may," and made a minor stylistic change, in the fifth sentence, added quotation marks around "cost assessed against the property," inserted "either" and added "and administrative costs and legal costs of the municipality" at the end, rewrote the sixth sentence, and deleted the former seventh sentence; and added (8).

The first 2010 amendment (ch. 471) rewrote the section, revising the procedures provided to municipalities to clean property determined to be a menace to the community.

The second 2010 amendment (ch. 475) added the (3)(a) designation, and therein made a minor stylistic change; and added (3)(b).

The first 2014 amendment (ch. 372), in the third paragraph of (1)(b), inserted "abandoned or" preceding "dilapidated buildings" in the first and fifth sentences, inserted "except as otherwise provided in this section for removal of hazardous substances" and substituted "more" for "less" in the fifth sentence, and inserted the sixth sentence.

The second 2014 amendment (ch. 473), in the second paragraph of (1)(b), inserted "final adjudication" in the first sentence; in the third paragraph of (1)(b), inserted "abandoned or" preceding "dilapidated fences," and inserted "slabs" in the first sentence, substituted "and/or" for "or" in the third sentence, inserted "abandoned or" preceding "dilapidated buildings," "slabs," and "except as otherwise provided in this section for removal of hazardous substances," and substituted "more" for "less" in the fifth sentence, and added the sixth sentence; in (3)(a), substituted "declares" for "does not declare" and "an assessment against the property" for "a civil debt" in the first sentence and added the last sentence.

JUDICIAL DECISIONS

1. Notice of hearing.
2. Menace properly found.

1. Notice of hearing.

Plaintiff property owner testified that despite a mistaken property description in the notices he received, he knew which property the defendant city was referring to and did not realize the legal description was not for that property until after the property had already been torn down by the city and he was provided two weeks notice and a chance to be heard pursuant to Miss. Code Ann. § 21-19-11. Pearson v. City of Louisville, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 89580 (N.D. Miss. Nov. 4, 2008).

2. Menace properly found.

City council's actions in finding a property owner's four properties were a menace were not arbitrary and capricious because the property owner admitted that his yards were messy and a video clearly

showed that the properties were a mess. Vazzana v. City of Greenville, 116 So. 3d 1103 (Miss. Ct. App. 2013).

ATTORNEY GENERAL OPINIONS

Any parcel of property located within a municipality may be cleaned by the municipality, upon a factual determination by the governing authorities the property is in a state of uncleanliness so as to constitute a menace to the public health and safety of the community. The fact that there is a lien on the property does not interfere with the municipality's authority to clean the property upon the failure of the owner to do and there is no requirement that a lienholder receive any notice of the action. Robinson, Mar. 11, 2005, A.G. Op. 05-0105.

Although the cost of employing an engineer to survey and delineate the boundaries of properties in need of cleaning cannot be included in the calculation of the actual cost of cleaning the property, a municipality may, by imposition of a penalty, recoup its expenses for any survey or delineation. Campbell, Apr. 8, 2005, A.G. Op. 05-0162.

Some municipalities, in accordance with their responsibilities under Sections 21-19-1 et seq., proclaim neighborhood clean-up days and encourage residents and volunteers to properly maintain property within the municipality by making drop-off containers for debris and other acceptable materials available and accessible at different locations in the municipalities. Welch, May 26, 2006, A.G. Op. 06-0205.

In a situation in which the record owner of a parcel of property is known or believed to be deceased, the notice must be published as well as mailed to the address currently listed in the land rolls. Logan, May 26, 2006, A.G. Op. 06-0204.

Section 21-19-11 does not authorize the sale of personal property removed from a parcel for the purpose of mitigating or offsetting the expenses of cleaning the property. This does not mean that a municipality may not dispose of abandoned personal property acquired by virtue of cleaning private property. In such case, the municipality may utilize the mechanism provided by Section 21-39-21 for disposal of lost, stolen or abandoned personal property. Maxey, May 19, 2006, A.G. Op. 06-0193.

Consistent with Section 21-19-11 (as amended), a municipality may enact, by ordinance, criminal penalties for the failure of an owner to maintain privately-owned property in a clean state. Davis, Oct. 27, 2006, A.G. Op. 06-0527.

If notice by mail is returned by the post office unclaimed, the state is required to take additional reasonable steps to attempt to provide notice to the owner before selling the property, if practicable. Henry, Nov. 17, 2006, A.G. Op. 06-0416.

Only actual costs of property clean-up may be recouped from a property owner by a municipality under Miss. Code Ann. § 21-19-11. Legal fees, surveys, and other administrative expenses do not qualify as actual costs of clean-up and may not be recovered in the manner prescribed by the statute. The municipality could, however, adopt a criminal ordinance as contemplated in the statute, and could assess a criminal penalty against the property owner in an effort to recoup its expenses. Turnage, February 9, 2007, A.G. Op. #07-00026, 2007 Miss. AG LEXIS 15.

A town may treat expenses for cleaning property either as a civil debt or as a lien on the property. A lien is to be treated exactly as a lien for delinquent taxes and thus remains viable through any foreclosure proceedings. In a sale to recover the lien amount, a town must follow the procedures for notice, time of sale, and the like pursuant to Miss. Code Ann. § 27-41-55 et seq. Maxey, March 2, 2007, A.G. Op. #07-00088, 2007 Miss. AG LEXIS 83.

A municipality may sell property subject to a lien for delinquent cleaning costs created under the provisions of Miss. Code Ann. § 21-19-11, and may, via an interlocal agreement, authorize a county to conduct a tax sale on behalf of the city for the purpose of selling said private property in a manner consistent with property sold for delinquent municipal

taxes. Tucker, March 16, 2007, A.G. Op. #07-00126, 2007 Miss. AG LEXIS 110.

§ 21-19-13. Changes of streams and bridges; clean drainage ditches and prevent erosion; levying taxes to pay for authorized works.

ATTORNEY GENERAL OPINIONS

A city has the authority to perform whatever measures it deems necessary to prevent erosion on a landowner's private property, however, this authority of the city does not rise to the level of a duty. Logan, Aug. 11, 2006, A.G. Op. 06-0327.

§ 21-19-15. Enacting police regulations.

ATTORNEY GENERAL OPINIONS

September 14, 1995 opinion to Hon. Jerry L. Mills and June 6, 2002 opinion to Mr. John Hedglin, pertaining to closing of public streets temporarily for public purposes, reaffirmed and clarified. Mills, May 13, 2005, A.G. Op. 05-0212.

Governing authorities may allow gates, cameras, speed bumps or other similar devices on public municipal streets as long as such streets remain fully and equally accessible to all members of the general public. Mills, Apr. 28, 2006, A.G. Op. 06-0053.

§ 21-19-20. Proceedings to demolish or seize abandoned houses or buildings used for sale or use of drugs or constituting public hazard or nuisance; authority to sell, transfer, convey or use abandoned houses or buildings for suitable municipal purposes.

(1)(a) A municipality shall institute proceedings to have demolished or seized an abandoned house or building that is used for the sale or use of drugs. In addition, the governing authorities of a municipality may sell, transfer or otherwise convey or use an abandoned house or building for suitable municipal purposes. The local law enforcement authority of the municipality shall have documented proof of drug sales or use in the abandoned property before a municipality may initiate proceedings to have the property demolished or seized.

(b)(i) A municipality shall institute proceedings under this section to have an abandoned house or building demolished or seized if the governing authority of the municipality determines that the house or building is a menace to the public health and safety of the community and that it constitutes a public hazard and nuisance.

(ii) Upon the receipt of a petition requesting the municipality to demolish or seize an abandoned house or building that constitutes a public hazard and nuisance signed by a majority of the residents residing within four hundred (400) feet of the property, the governing authority of the

municipality shall notify the property owner that the petition has been filed and that a date for a hearing on the petition has been set. Notice to the property owner shall be by United States mail, or if the property owner or the owner's address is unknown, publication of the notice shall be made twice each week during two (2) successive weeks in a public newspaper of the county in which the municipality is located; where there is no newspaper in the county, the notice shall be published in a newspaper having a general circulation in the state. The hearing shall be held not less than thirty (30) nor more than sixty (60) days after service or completion of publication of the notice. At the hearing, the governing authority shall determine whether the property is a menace to the public health and safety of the community which constitutes a public hazard and nuisance. If the governing authority determines that the property is a public hazard and nuisance, the municipality shall institute proceedings under subsection (2) of this section to demolish or seize the abandoned house or building.

(2) The municipality shall file a petition to declare the abandoned property a public hazard and nuisance and to have the property demolished or seized with the circuit clerk of the county in which the property or some part of the property is located. All of the owners of the property involved, and any mortgagee, trustee, or other person having any interest in or lien on the property shall be made defendants to the proceedings. The circuit clerk shall present the petition to the circuit judge who, by written order directed to the circuit clerk, shall fix the time and place for the hearing of the matter in termtime or vacation. The time of the hearing shall be fixed on a date to allow sufficient time for each defendant named to be served with process, as otherwise provided by law, not less than thirty (30) days before the hearing. If a defendant or other party in interest is not served for the specified time before the date fixed, the hearing shall be continued to a day certain to allow the thirty-day period specified.

(3) Any cost incurred by a municipality under this section for demolishing or seizing abandoned property shall be paid by the owners of the property.

SOURCES: Laws, 1995, ch. 343, § 1; Laws, 2005, ch. 427, § 2; Laws, 2008, ch. 521, § 1, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment inserted "or seized" "or seize" and "or seizing" everywhere they appear; added the second sentence of (1)(a); and inserted "under this section" in (1)(b)(i) and in (3).

§ 21-19-25. Adoption, amendment and revision of building and other codes.

Any municipality within the State of Mississippi may, in the discretion of its governing authority, adopt building codes, plumbing codes, electrical codes, gas codes, sanitary codes, or any other codes dealing with general public health, safety or welfare, or a combination of the same, by ordinance, in the

manner prescribed in this section. Before any such code shall be adopted, it shall be either printed or typewritten, and it shall be presented in pamphlet form to the governing authority of the municipality at a regular meeting. The ordinance adopting the code shall not set out the code in full, but shall merely identify the same. The vote on passage of the ordinance shall be the same as on any other ordinances. After its adoption, the code shall be certified to by the mayor and clerk of the municipality, and shall be filed as a permanent record in the office of the clerk, who shall not be required to transcribe and record the same in the ordinance book as other ordinances. It shall not be necessary that the ordinance adopting the code or the code itself be published in full, but notice of the adoption of the code shall be given by publication in some newspaper of the municipality for one (1) time, or if there be no such newspaper, by posting at three (3) or more public places within the corporate limits, a notice in substantially the following form:

> Notice is given that the city (or town or village) of _____, on the (give date of ordinance adopting code), adopted (state type of code and other information serving to identify the same) code.

If the governing authority of any municipality adopts or has adopted construction codes which do not have proper provisions to maintain up-to-date amendments, specifications in such codes for cements used in portland cement concrete shall be superseded by nationally recognized specifications referenced in any code adopted by the Mississippi Building Code Council.

All the provisions of this section shall apply to amendments and revisions of the code mentioned in this section. Any code adopted in accordance with this section shall not be in force for one (1) month after its passage, unless the municipal authorities in the ordinance authorize to the contrary. The provisions of this section shall be in addition and supplemental to any existing laws authorizing the adoption, amendment or revision of municipal ordinances or codes.

Notwithstanding any provision of this section to the contrary, any code adopted by a municipality before or after April 12, 2001, is subject to the provisions of Section 41-26-14(10).

Notwithstanding any provision of this section to the contrary, the governing authorities of each municipality in Jackson, Harrison, Hancock, Stone and Pearl River Counties shall enforce the requirements imposed under Section 17-2-1 as provided in such section.

The provisions of this section shall apply to all municipalities of this state, whether operating under the code charter, a special charter, commission form, or other form of government.

SOURCES: Codes, 1942, §§ 3374-80, 3374-81; Laws, 1946, ch. 438; Laws, 1950, ch. 491, §§ 80, 81; Laws, 2001, ch. 587, § 3; Laws, 2006, ch. 541, § 7; Laws, 2008, ch. 379, § 2, eff from and after passage (approved Mar. 31, 2008.)

Amendment Notes — The 2008 amendment substituted "governing authority" for "governing authorities" in the first two sentences of the first paragraph; and added the third paragraph.

ATTORNEY GENERAL OPINIONS

Under Miss. Code Ann. § 21-19-25, a municipality may require proof of general liability insurance and workers' compensation coverage when required by Miss. Code Ann. § 71-3-1 et seq., as conditions for the issuance of a municipal building permit. Hedglin, March 23, 2007, A.G. Op. #07-00133, 2007 Miss. AG LEXIS 119.

§ 21-19-35. Regulation of transient vendors and photographers; power of counties and municipalities; application of county and municipal ordinances.

ATTORNEY GENERAL OPINIONS

The bond required by Section 75-85-13 is separate and distinct from the bond which may be imposed by either municipalities and/or counties under Sections 21-19-35 and 19-3-83, respectively; i.e., transient vendors must comply with any and all applicable statutes. Weems, July 25, 2006, A.G. Op. 06-0269.

The term "penal bond" in Sections 21-19-35 and 19-3-83 means the same and can be used interchangeably with the more commonly used term "surety" bond. Weems, July 25, 2006, A.G. Op. 06-0269.

§ 21-19-46. Donating to Court Appointed Special Advocates (CASA).

The governing authority of any municipality is authorized, in its discretion, to donate to any chapter of the Court Appointed Special Advocates (CASA) out of any funds in the municipal treasury; however, the cumulative sum of donations to a chapter may not exceed the amount generated in the municipality by one-fourth (¼) mill on all of the taxable property within the municipality during the fiscal year in which the donations are made. Nothing in this section authorizes the imposition of additional tax.

SOURCES: Laws, 2011, ch. 461, § 1, eff from and after July 1, 2011.

§ 21-19-49. Appropriation of funds or conveyance of buildings and property to school districts by local governments; contracts for provision of additional police protection for schools; off-duty law enforcement officers authorized to use public uniforms and equipment for school security purposes; municipalities authorized to donate to public school districts for certain purposes.

ATTORNEY GENERAL OPINIONS

Section 21-19-49(3) does not authorize the governing authorities of a city to allow off-duty municipal police officers to utilize municipal law enforcement uniforms and equipment during off-duty security employment with a community college. McWilliams, Mar. 10, 2006, A.G. Op. 06-0055.

§ 21-19-58. Donating to Mississippi Burn Care Fund.

Cross References — Board of supervisors of each county authorized to donate money to the Mississippi Burn Care Fund subject to the limitations specified in this section, see § 19-5-93.

ATTORNEY GENERAL OPINIONS

Funds received pursuant to Sections 21-19-58 and 27-39-331 by the Burn Association prior to the 2005 change in law should belong to the Delta Regional Medical Center. Anderson, Sept. 28, 2005, A.G. Op. 05-0402.

§ 21-19-63. Requiring maps of subdivisions to be furnished and approved; effect of dedication; easement declared abandoned.

The governing authorities of municipalities may provide that any person desiring to subdivide a tract of land within the corporate limits shall submit a map and plat of such subdivision, and a correct abstract of title of the land platted, to said governing authorities, to be approved by them before the same shall be filed for record in the land records of the county. Where the municipality has adopted an ordinance so providing, no such map or plat of any such subdivision shall be recorded by the chancery clerk unless same has been approved by said governing authorities. In all cases where a map or plat of the subdivision is submitted to the governing authorities of a municipality, and is by them approved, all streets, roads, alleys and other public ways set forth and shown on said map or plat shall be thereby dedicated to the public use, and shall not be used otherwise unless and until said map or plat is vacated in the manner provided by law, notwithstanding that said streets, roads, alleys or other public ways have not been actually opened for the use of the public. If any easement dedicated pursuant to the provisions of this section for a street, road, alley or other public purpose is determined to be not needed for the public purpose, the easement may be declared abandoned, and ownership of the fee underlying the easement shall revert, regardless of the date of dedication, to the adjoining property owner or owners at the time of abandonment. Ownership of the easement shall extend to the centerline of said abandoned street, road or public way. Such abandonment and reversion shall not affect any private easements which might exist.

SOURCES: Codes, 1892, § 2937; 1906, § 3328; Hemingway's 1917, § 5825; 1930, § 2405; 1942, § 3374-123; Laws, 1950, ch. 491, § 123; Laws, 2008, ch. 339, § 2; Laws, 2009, ch. 531, § 2, eff from and after passage (approved Apr. 14, 2009.)

Amendment Notes — The 2008 amendment added the last two sentences.

The 2009 amendment rewrote the third and fourth sentences; and added the last sentence.

ATTORNEY GENERAL OPINIONS

A municipality holds fee simple title to property, including, but not limited to, streets, when the property is dedicated to the city. Herring, Sept. 11, 2006, A.G. Op. 06-0419.

§ 21-19-65. Matching funds for social and community service programs.

ATTORNEY GENERAL OPINIONS

A policy of a municipality establishing a lower fee for use of municipal facilities for charitable benefits than charged for other private uses would be impermissible. As an alternative, however, certain statutes authorize municipal donations to certain types of qualified organizations. Baum, Feb. 17, 2006, A.G. Op. 06-0048.

Under Miss. Code Ann. § 61-5-39, the Tunica County Airport Commission, a joint venture of the Town of Tunica and Tunica County, may dispose of its unused real property by leasing or selling it to a nonprofit organization for use as a homeless shelter, with the consent of the governing authorities of both the town and the county, and using the procedures outlined in Miss. Code Ann. §§ 19-7-3, 21-17-1 or 57-7-1. Dulaney, March 16, 2007, A.G. Op. #07-00125, 2007 Miss. AG LEXIS 107.

§ 21-19-67. Annual donations to chartered chapters of the Boys and Girls Clubs of America or the Young Men's Christian Association (YMCA), or to certain certified farmers' markets located within the municipality.

The governing authority of any municipality in the state, in its discretion, is authorized to donate annually, out of any funds in the municipal treasury, to:

(a) **Boys and Girls Club.** — Any chartered chapter of the Boys and Girls Clubs of America located within the municipality, provided that the cumulative sum of donations to all chapters within the municipality does not exceed the amount generated in the municipality by one-fourth (¼) mill on all of the taxable property within the municipality, during the fiscal year in which the donations are made. Nothing in this paragraph authorizes the imposition of additional tax.

(b) **Young Men's Christian Association (YMCA).** — Any chartered chapter of the YMCA located within the municipality, out of any funds in the treasury of the municipality, provided that the cumulative sum of donations to all chapters within the municipality does not exceed the amount generated in the municipality by one-fourth (¼) mill on all of the taxable property within the municipality, during the fiscal year in which the donations are made. Nothing in this paragraph authorizes the imposition of additional tax.

(c) **Farmers' markets.** — Any farmers' market that is certified by the Mississippi Department of Agriculture and Commerce and operating within the municipality, not to exceed the amount that would be generated from the levy of a one-fourth (¼) mill ad valorem tax upon all taxable property in the municipality.

SOURCES: Laws, 2009, ch. 415, § 1; Laws, 2013, ch. 396, § 3, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment inserted the subsection (a) designator and inserted "annually" in the introductory language; substituted "paragraph" for "section" in the last sentence of (a); and added (b) and (c).

§ 21-19-69. Donating to support certified farmers' market.

The governing authorities of any municipality of this state, in their discretion, may donate annually out of any money in the municipal treasury, such sums as deemed advisable to support any farmers' market that is certified by the Mississippi Department of Agriculture and Commerce and operating within the municipality, not to exceed the amount that would be generated from the levy of a one-fourth (¼) mill ad valorem tax upon all taxable property in the municipality.

SOURCES: Laws, 2012, ch. 467, § 1; brought forward without change, Laws, 2013, ch. 396, § 4, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment brought the section forward without change.

CHAPTER 21

Police and Police Departments

GENERAL PROVISIONS

§ 21-21-1. Marshal or chief of police; duties; bond.

ATTORNEY GENERAL OPINIONS

In the mayor-alderman form of municipal government the board of aldermen has no authority to interfere in the day-do-day operations of a municipal department, including the police department. The responsibility to assign individual work duties and shifts within the police department lies with the police chief. Reynolds, Sept. 23, 2005, A.G. Op. 05-0480.

Both the municipal police and the county sheriff have the authority and duty to keep the peace within municipal limits. Webster, Oct. 21, 2005, A.G. Op. 05-0485.

Authority to hire, fire, set compensation, and define duties of municipal employees rests solely with the board of aldermen, subject to mayoral veto power. Whether a part-time police chief is sufficient to satisfy the municipality's statutory duty to provide police protection is a factual determination to be made by the governing authority. If a municipality does not have a police chief, the board of aldermen must appoint one. An untrained part-time police officer is a law enforcement trainee who must be supervised by a certified officer and has two years from hiring to become certified. McLain, March 2, 2007, A.G. Op. #07-00069, 2007 Miss. AG LEXIS 82.

§ 21-21-3. Police and night marshals.

ATTORNEY GENERAL OPINIONS

A municipality has a statutory duty under Miss. Code Ann. § 21-21-3 to provide sufficient police protection. The manner in which a municipality complies with that duty, and whether it can close its Police Department for a 24-hour period to give its officers leave, are determinations to be made by the municipality. Brannon, February 16, 2007, A.G. Op. #07-00068, 2007 Miss. AG LEXIS 25.

CHAPTER 23

Municipal Courts

SEC.

§ 21-23-3. Appointment of municipal judge and prosecuting attorney in certain municipalities.

In all municipalities having a population of ten thousand (10,000) or more, according to the latest available federal census, there shall be a municipal judge and a prosecuting attorney, who shall be appointed by the governing authorities of the municipality at the time provided for the appointment of other officers. The municipal governing authorities may appoint one (1) additional municipal judge, who shall exercise the same authority and prerogatives of the office, regardless of the presence or absence of the other municipal judge. Except as otherwise provided in Section 21-23-5, a municipal judge shall be a qualified elector of the county in which the municipality is located and shall be an attorney at law. Such municipal judges and prosecuting attorney shall receive a salary, to be paid by the municipality, and to be fixed by the governing authorities of the municipality.

In any proceeding in which a conflict of interest arises for the prosecuting attorney, or any other reason dictates that he recuse himself, the mayor of the municipality may appoint a special prosecuting attorney for that particular proceeding. Such special prosecuting attorney shall be compensated for his services in the same manner and amount as allowed under Section 21-23-7 for appointed counsel for indigent persons.

Provided, however, the governing authorities of any municipality having a population in excess of ten thousand (10,000) persons according to the latest available federal census and situated in a county having an area in excess of nine hundred thirty-five (935) square miles and having a county court may, in their discretion, follow the provisions as set out in Section 21-23-5 for municipalities having a population of less than ten thousand (10,000).

Provided, further, the governing authorities of any municipality having a population in excess of fifty thousand (50,000) according to the latest federal decennial census may, in their discretion, provide for the appointment of not more than ten (10) municipal judges for said municipality, each of whom shall exercise the same authority and prerogatives of their office, regardless of the presence or absence of the other municipal judges.

SOURCES: Codes, 1892, § 3001; 1906, §§ 3398, 3399; Hemingway's 1917, §§ 5926-5929; 1930, §§ 2535-2537; 1942, § 3374-103; Laws, 1910, ch. 169; Laws, 1950, ch. 491, § 103; Laws, 1958, ch. 517, §§ 1, 2; Laws, 1960, ch. 424; Laws, 1974, ch. 353; Laws, 1979, ch. 401, § 2; Laws, 1989, ch. 571, § 1; Laws, 1998, ch. 530, § 1; Laws, 2006, ch. 415, § 1; Laws, 2010, ch. 406, § 1; Laws, 2014, ch. 353, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2010 amendment added the second and third sentences in the first paragraph; substituted "six (6) municipal judges" for "five (5) municipal judges" in the last paragraph; and made a minor stylistic change.

The 2014 amendment substituted "ten (10)" for "six (6)" in last paragraph.

ATTORNEY GENERAL OPINIONS

A person must be an elector of a county in which a municipality is located and must be a licensed attorney at law in Mississippi to be qualified to hold the office of municipal judge pro tempore. Mims, March 16, 2007, A.G. Op. #07-00141, 2007 Miss. AG LEXIS 112.

§ 21-23-5. Appointment of municipal judge in certain municipalities; qualifications.

In any municipality having a population of less than ten thousand (10,000) according to the latest available federal census, it shall be discretionary with the governing authorities of the municipality as to whether or not a municipal judge or a prosecuting attorney, or both, shall be appointed. If the authorities of any municipality having a population of less than twenty thousand (20,000) according to the latest available federal census appoint a municipal judge, he shall be an attorney licensed in the State of Mississippi or a justice court judge of the county in which the municipality is located. The mayor or mayor pro tempore shall not serve as a municipal judge.

SOURCES: Codes, 1892, § 3001; 1906, §§ 3398, 3399; Hemingway's 1917, §§ 5926-5929; 1930, §§ 2535-2537; 1942, § 3374-103; Laws, 1910, ch. 169; Laws, 1950, ch. 491, § 103; Laws, 1958, ch. 517, §§ 1, 2; Laws, 1960, ch. 424; Laws, 1976, ch. 379; Laws, 1977, ch. 314; Laws, 1979, ch. 401, § 3; Laws, 1981, chs. 471,

§ 44, 496, § 1; Laws, 1982, ch. 423, § 25; Laws, 1989, ch. 571, § 2; Laws, 2010, ch. 406, § 2; Laws, 2014, ch. 386, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2010 amendment inserted "of any municipality having a population...latest available federal census" in the second sentence in the first paragraph.

The 2014 amendment, in the second sentence in the first paragraph, substituted "he shall be an attorney licensed in the State of Mississippi" for "he may be a licensed attorney of such county, a licensed attorney of a county adjacent to such county" and "of the county in which the municipality is located" for "of such county" and added the last sentence; and deleted the second paragraph, which authorized, subject to funds being available, that the Mississippi Judicial College of the University of Mississippi Law Center conduct a "Municipal Judges Training Course" for mayors and mayors pro tempore who serve as municipal judges, and required that mayors elected or reelected for a term of office after July 1, 1979, must complete the training course.

ATTORNEY GENERAL OPINIONS

A municipal court judge may make a temporary appointment of a municipal prosecuting attorney until such time as the municipal prosecuting attorney is appointed in accordance with Section 21-23-5, and any compensation of such appointee shall be set by the city council. Jordan, Aug. 24, 2006, A.G. Op. 06-0414.

§ 21-23-7. Powers and duties of municipal judge; mayor serving as municipal judge.

(1) The municipal judge shall hold court in a public building designated by the governing authorities of the municipality and may hold court every day except Sundays and legal holidays if the business of the municipality so requires; provided, however, the municipal judge may hold court outside the boundaries of the municipality but not more than within a sixty-mile radius of the municipality to handle preliminary matters and criminal matters such as initial appearances and felony preliminary hearings. The municipal judge shall have the jurisdiction to hear and determine, without a jury and without a record of the testimony, all cases charging violations of the municipal ordinances and state misdemeanor laws made offenses against the municipality and to punish offenders therefor as may be prescribed by law. Except as otherwise provided by law, criminal proceedings shall be brought by sworn complaint filed in the municipal court. Such complaint shall state the essential elements of the offense charged and the statute or ordinance relied upon. Such complaint shall not be required to conclude with a general averment that the offense is against the peace and dignity of the state or in violation of the ordinances of the municipality. He may sit as a committing court in all felonies committed within the municipality, and he shall have the power to bind over the accused to the grand jury or to appear before the proper court having jurisdiction to try the same, and to set the amount of bail or refuse bail and commit the accused to jail in cases not bailable. The municipal judge is a conservator of the peace within his municipality. He may conduct preliminary hearings in all violations of the criminal laws of this state occurring within the municipality, and any person arrested for a violation of law within the

municipality may be brought before him for initial appearance. The municipal court shall have jurisdiction of any case remanded to it by a circuit court grand jury. The municipal court shall have civil jurisdiction over actions filed pursuant to and as provided in Title 93, Chapter 21, Mississippi Code of 1972, the Protection from Domestic Abuse Act.

(2) In the discretion of the court, where the objects of justice would be more likely met, as an alternative to imposition or payment of fine and/or incarceration, the municipal judge shall have the power to sentence convicted offenders to work on a public service project where the court has established such a program of public service by written guidelines filed with the clerk for public record. Such programs shall provide for reasonable supervision of the offender and the work shall be commensurate with the fine and/or incarceration that would have ordinarily been imposed. Such program of public service may be utilized in the implementation of the provisions of Section 99-19-20, and public service work thereunder may be supervised by persons other than the sheriff.

(3) The municipal judge may solemnize marriages, take oaths, affidavits and acknowledgments, and issue orders, subpoenas, summonses, citations, warrants for search and arrest upon a finding of probable cause, and other such process under seal of the court to any county or municipality, in a criminal case, to be executed by the lawful authority of the county or the municipality of the respondent, and enforce obedience thereto. The absence of a seal shall not invalidate the process.

(4) When a person shall be charged with an offense in municipal court punishable by confinement, the municipal judge, being satisfied that such person is an indigent person and is unable to employ counsel, may, in the discretion of the court, appoint counsel from the membership of The Mississippi Bar residing in his county who shall represent him. Compensation for appointed counsel in criminal cases shall be approved and allowed by the municipal judge and shall be paid by the municipality. The maximum compensation shall not exceed Two Hundred Dollars ($200.00) for any one (1) case. The governing authorities of a municipality may, in their discretion, appoint a public defender(s) who must be a licensed attorney and who shall receive a salary to be fixed by the governing authorities.

(5) The municipal judge of any municipality is hereby authorized to suspend the sentence and to suspend the execution of the sentence, or any part thereof, on such terms as may be imposed by the municipal judge. However, the suspension of imposition or execution of a sentence hereunder may not be revoked after a period of two (2) years. The municipal judge shall have the power to establish and operate a probation program, dispute resolution program and other practices or procedures appropriate to the judiciary and designed to aid in the administration of justice. Any such program shall be established by the court with written policies and procedures filed with the clerk of the court for public record. Subsequent to original sentencing, the municipal judge, in misdemeanor cases, is hereby authorized to suspend sentence and to suspend the execution of a sentence, or any part thereof, on

such terms as may be imposed by the municipal judge, if (a) the judge or his or her predecessor was authorized to order such suspension when the sentence was originally imposed; and (b) such conviction (i) has not been appealed; or (ii) has been appealed and the appeal has been voluntarily dismissed.

(6) Upon prior notice to the municipal prosecuting attorney and upon a showing in open court of rehabilitation, good conduct for a period of two (2) years since the last conviction in any court and that the best interest of society would be served, the court may, in its discretion, order the record of conviction of a person of any or all misdemeanors in that court expunged, and upon so doing the said person thereafter legally stands as though he had never been convicted of the said misdemeanor(s) and may lawfully so respond to any query of prior convictions. This order of expunction does not apply to the confidential records of law enforcement agencies and has no effect on the driving record of a person maintained under Title 63, Mississippi Code of 1972, or any other provision of said Title 63.

(7) Notwithstanding the provisions of subsection (6) of this section, a person who was convicted in municipal court of a misdemeanor before reaching his twenty-third birthday, excluding conviction for a traffic violation, and who is a first offender, may utilize the provisions of Section 99-19-71, to expunge such misdemeanor conviction.

(8) In the discretion of the court, a plea of nolo contendere may be entered to any charge in municipal court. Upon the entry of a plea of nolo contendere the court shall convict the defendant of the offense charged and shall proceed to sentence the defendant according to law. The judgment of the court shall reflect that the conviction was on a plea of nolo contendere. An appeal may be made from a conviction on a plea of nolo contendere as in other cases.

(9) Upon execution of a sworn complaint charging a misdemeanor, the municipal court may, in its discretion and in lieu of an arrest warrant, issue a citation requiring the appearance of the defendant to answer the charge made against him. On default of appearance, an arrest warrant may be issued for the defendant. The clerk of the court or deputy clerk may issue such citations.

(10) The municipal court shall have the power to make rules for the administration of the court's business, which rules, if any, shall be in writing filed with the clerk of the court and shall include the enactment of rules related to the court's authority to issue domestic abuse protection orders pursuant to Section 93-21-1 et seq.

(11) The municipal court shall have the power to impose punishment of a fine of not more than One Thousand Dollars ($1,000.00) or six (6) months' imprisonment, or both, for contempt of court. The municipal court may have the power to impose reasonable costs of court, not in excess of the following:

Dismissal of any affidavit, complaint or charge in municipal court	$ 50.00
Suspension of a minor's driver's license in lieu of conviction	$ 50.00
Service of scire facias or return "not found"	$ 20.00
Causing search warrant to issue or causing prosecution	

without reasonable cause or refusing to cooperate after initiating action ..... $ 100.00
Certified copy of the court record ..... $ 5.00
Service of arrest warrant for failure to answer citation or traffic summons ..... $ 25.00
Jail cost per day .....
actual jail cost paid by the municipality but not to exceed $ 35.00
Service of court documents related to the filing of a petition or issuance of a protection from domestic abuse order under Title 93, Chapter 21, Mississippi Code of 1972 ..... $ 25.00
Any other item of court cost ..... $ 50.00

No filing fee or such cost shall be imposed for the bringing of an action in municipal court.

(12) A municipal court judge shall not dismiss a criminal case but may transfer the case to the justice court of the county if the municipal court judge is prohibited from presiding over the case by the Canons of Judicial Conduct and provided that venue and jurisdiction are proper in the justice court. Upon transfer of any such case, the municipal court judge shall give the municipal court clerk a written order to transmit the affidavit or complaint and all other records and evidence in the court's possession to the justice court by certified mail or to instruct the arresting officer to deliver such documents and records to the justice court. There shall be no court costs charged for the transfer of the case to the justice court.

(13) A municipal court judge shall expunge the record of any case in which an arrest was made, the person arrested was released and the case was dismissed or the charges were dropped or there was no disposition of such case.

SOURCES: Codes, 1892, § 3001; 1906, §§ 3398, 3399; Hemingway's 1917, §§ 5926-5929; 1930, §§ 2535-2537; 1942, §§ 3374-103, 3374-104; Laws, 1910, ch. 169; Laws, 1936, ch. 276; Laws, 1950, ch. 491, §§ 103, 104; Laws, 1958, ch. 517, §§ 1, 2; Laws, 1960, ch. 424; Laws, 1976, ch. 312; Laws, 1979, ch. 401, § 4; Laws, 1987, ch. 380, § 1; Laws, 1988, ch. 564, § 1; Laws, 1991, ch. 322, § 1; Laws, 1996, ch. 454, § 1; Laws, 1997, ch. 417, § 1; Laws, 2000, ch. 619, § 1; Laws, 2007, ch. 495, § 3; Laws, 2009, ch. 374, § 2; Laws, 2009, ch. 545, § 8; Laws, 2013, ch. 358, § 1, eff from and after July 1, 2013.

Joint Legislative Committee Note — Section 2 of ch. 374 Laws of 2009, effective from and after its passage (approved March 17, 2009), amended this section. Section 8 of ch. 545, Laws of 2009, effective July 1, 2009 (approved April 15, 2009), also amended this section. As set out above, this section reflects the language of Section 8 of ch. 545, Laws of 2009, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (11) by deleting the dots between "not to exceed" and "$35.00." The Joint Committee ratified the correction at its August 1, 2013, meeting.

Amendment Notes — The first 2009 amendment (ch. 374), added the second sentence of (5).

The second 2009 amendment (ch. 545) added the last sentence of (1); added the last sentence of (5); added "and shall include...Section 93-21-1 et seq." at the end of (10); and added "Service of court documents...Mississippi Code of 1972" and cost of "$25.00" to the list of costs of court in (11).

The 2013 amendment in the table in (1), substituted "actual jail cost paid by the municipality but not to exceed $ 35.00" for "$ 10.00."

JUDICIAL DECISIONS

2. Judicial misconduct.
3. Sufficiency of sworn complaint.

2. Judicial misconduct.

Judge was publicly reprimanded and suspended for 30 days for misconduct which brought the judicial office into disrepute pursuant to Miss. Const. art. VI, § 177A in failing to properly adjudicate criminal matters, and engaging in ticket-fixing, in exchange for simultaneous payments to a "drug fund" established and maintained by the town police chief, which violated Miss. Code Jud. Conduct Canons 1, 2A, 3B(1), 3B(2), 3B(8); the judge admitted that his decision to accept the lesser pleas contingent on payments into the drug fund was at least partially motivated by his desire to collect fees for the town, and this was not a mistake of the law, but a clear disregard of it, and was sanctionable. After considering the Gibson factors, the commission's recommendation was adopted. Miss. Comm'n on Judicial Performance v. Smith, 109 So. 3d 95 (Miss. 2013).

3. Sufficiency of sworn complaint.

Traffic citation issued to defendant constituted a sworn affidavit and thus provided jurisdiction to both a municipal court and a circuit court to hear a charge of DUI despite a failure to include a court date as required by Miss. Code Ann. § 63-9-21(3)(c), because defendant had actual knowledge of the date and the citation had been amended to include it. Wildmon v. City of Booneville, 980 So. 2d 304 (Miss. Ct. App. 2007), writ of certiorari denied by 979 So. 2d 691, 2008 Miss. LEXIS 188 (Miss. 2008).

ATTORNEY GENERAL OPINIONS

Any person who is a first offender, regardless of age at the time of their conviction, may petition the municipal court for expungement of a misdemeanor conviction occurring in that court. Davis, Apr. 1, 2005, A.G. Op. 05-0152.

A traffic ticket that contains the information set forth in Section 63-9-21 constitutes a "sworn affidavit" as referred to in Section 21-23-7(1) when the officer who issues the ticket has it properly attested and filed with the proper court; a criminal affidavit can be acknowledged by any person authorized by law to administer oaths and this would include a court clerk or deputy court clerk from another jurisdiction or a notary public. Aldridge, Apr. 1, 2005, A.G. Op. 05-0111.

A municipality may enter into an agreement with a constable to serve municipal warrants in the county and the constable's service fee may be collected as an item of court cost pursuant to Section 21-23-7(11). There is no authority, however, to add the constable's fee to the bond on each warrant. Redmond, Aug. 26, 2005, A.G. Op. 05-0447.

Section 21-23-7 allows establishment of a work program, usually for people who are not incarcerated. Nowak, July 28, 2006, A.G. Op. 06-0268.

A ticket/citation for non-traffic misdemeanors must be in the form of an affidavit (as is a uniform traffic citation) and must state the essential elements of the offense charged and include the ordinance or statute relied upon. Clark, Oct. 27, 2006, A.G. Op. 06-0524.

The citation must be served personally on the defendant. Henry, Nov. 17, 2006, A.G. Op. 06-0416.

A municipal court may establish and operate probation programs including the use of alternative sentencing programs, including house arrest administered by private companies, and the court may

order the defendant to pay costs to the third party for such monitoring and may authorize the use of monitoring bracelets. Bruni, Dec. 15, 2006, A.G. Op. 06-0608.

A municipal court has jurisdiction to hear and decide, without a jury, an alleged violation of Miss. Code Ann. § 97-5-39(1)(a), and to punish offenders as prescribed by law. The penalty for state misdemeanors tried in a municipal court is limited to six months incarceration and/or a $1,000 fine pursuant to Miss Code Ann. § 21-13-19. Boutwell, March 16, 2007, A.G. Op. #07-00124, 2007 Miss. AG LEXIS 113.

Where a preliminary hearing is provided to a defendant charged for a felony and held as a municipal prisoner, the defendant should be bound over to a grand jury and thereby become a county prisoner after the hearing, if the judge so determines. Wiggins, March 2, 2007, A.G. Op. #07-00075, 2007 Miss. AG LEXIS 78.

§ 21-23-8. Bail; purpose; forfeiture; judgment nisi and bench warrant; revocation of authority of surety to write bail bonds upon final judgment; setting of bail.

(1)(a) The purpose of bail is to guarantee appearance and a bail bond shall not be forfeited for any other reason.

(b)(i) If a defendant in any criminal case, proceeding or matter fails to appear for any proceeding as ordered by the municipal court, then the court shall order the bail forfeited and a judgment nisi and a bench warrant issued at the time of nonappearance. The clerk of the municipal court shall notify the surety of the forfeiture by writ of scire facias, with a copy of the judgment nisi and bench warrant attached thereto, within ten (10) working days of such order of judgment nisi either by personal service or by certified mail. Failure of the clerk to provide the required notice within ten (10) working days shall constitute prima facie evidence that the order should be set aside.

(ii)1. The judgment nisi shall be returnable for ninety (90) days from the date of issuance. If during that period the defendant appears before the municipal court, or is arrested and surrendered, then the judgment nisi shall be set aside. If the surety produces the defendant or provides to the municipal court reasonable mitigating circumstances upon such showing, then the forfeiture shall not be made final. If the forfeiture is made final, a copy of the final judgment shall be served on the surety within ten (10) working days by either personal service or certified mail.

2. Reasonable mitigating circumstances shall be that the defendant is incarcerated in another jurisdiction; that the defendant is hospitalized under a doctor's care; that the defendant is in a recognized drug rehabilitation program; that the defendant has been placed in a witness protection program, in which case it shall be the duty of any agency placing the defendant into a witness protection program to notify the municipal court and the municipal court to notify the surety; or any other reason justifiable to the municipal court.

(2) If a final judgment is entered against a surety licensed by the Department of Insurance and has not been set aside after ninety (90) days, or later if such time is extended by the municipal court issuing the judgment nisi,

then the municipal court shall order the department to revoke the authority of the surety to write bail bonds. The Commissioner of Insurance shall, upon notice of the municipal court, notify the surety within five (5) working days of receipt of the order of revocation. If after ten (10) working days of the notification the revocation order has not been set aside by the municipal court, then the commissioner shall revoke the authority of the surety and all agents of the surety and shall notify the sheriff of every county of such revocation.

(3) If within eighteen (18) months of the date of the final forfeiture the defendant appears for municipal court, is arrested or surrendered to the municipal court, or if the defendant is found to be incarcerated in another jurisdiction and a hold order placed on the defendant, then the amount of bail, less reasonable extradition cost, excluding attorney fees, shall be refunded by the municipal court upon application by the surety.

(4)(a) The municipal judge shall set the amount of bail for persons charged with offenses in municipal court and may approve the bond or recognizance therefor.

(b) In instances where the municipal judge is unavailable and has not provided a bail schedule or otherwise provided for the setting of bail, it is lawful for any officer or officers designated by order of the municipal judge to take bond, cash, property or recognizance, with or without sureties, in a sum to be determined by the officer, payable to the municipality and conditioned for the appearance of the person on the return day and time of the writ before the court to which the warrant is returnable, or in cases of arrest without a warrant, on the day and time set by the court or officer for arraignment, and there remain from day to day and term to term until discharged.

(c) All bonds shall be promptly returned to the court, together with any cash deposited, and be filed and proceeded on by the court in a case of forfeiture. The chief of the municipal police or a police officer or officers designated by order of the municipal judge may approve bonds or recognizances.

(d) All bonds and recognizances in municipal court where the municipal court shall have the jurisdiction to hear and determine the case may be made payable to the municipality and shall have the effect to bind the principal and any sureties on the bond or recognizance until they shall be discharged by due course of law without renewal.

SOURCES: Laws, 1979, ch. 401, § 5; Laws, 1988, ch. 564, § 2; Laws, 2001, ch. 547, § 2; Laws, 2010, ch. 466, § 4; Laws, 2011, ch. 463, § 3, eff from and after July 1, 2011.

Amendment Notes — The 2010 amendment rewrote the section, revising the procedure for forfeiture of bail bonds in municipal court.

The 2011 amendment in (1), inserted "(i)" at the beginning of (b), substituted "(ii)1." for "(c)" and inserted the "2." designation; inserted "the order of" preceding "revocation" in the second sentence in (2); substituted "eighteen (18)" for "twelve (12)" at the beginning of (3); added (4) and made minor stylistic changes.

§ 21-23-9. Municipal judge pro tempore.

ATTORNEY GENERAL OPINIONS

A municipal court judge cannot serve as judge pro tempore of another court where there is no presently sitting municipal court judge of the other court to make the designation required by the statute. Turnage, July 29, 2005, A.G. Op. 05-0379.

A person must be an elector of a county in which a municipality is located and must be a licensed attorney at law in Mississippi to be qualified to hold the office of municipal judge pro tempore. Mims, March 16, 2007, A.G. Op. #07-00141, 2007 Miss. AG LEXIS 112.

§ 21-23-11. Clerk of the court.

ATTORNEY GENERAL OPINIONS

Records of the municipal court are public records and must be provided to the governing authorities, if requested. Smith, Mar. 3, 2006, A.G. Op. 06-0066.

Operation of the municipal court, of whatever nature, is under the auspices and control of the municipal judge. Smith, Mar. 3, 2006, A.G. Op. 06-0066.

The municipal judge directs the clerk's attendance upon the court. Smith, Mar. 3, 2006, A.G. Op. 06-0066.

§ 21-23-12. Training and education program for municipal court clerks; instruction by Mississippi Judicial College; certificate of completion; compliance with Section 9-1-46.

(1) Every person appointed as clerk of the municipal court shall be required annually to attend and complete a comprehensive course of training and education conducted or approved by the Mississippi Judicial College of the University of Mississippi Law Center. Attendance shall be required beginning with the first training seminar conducted after said clerk is appointed.

(2) The Mississippi Judicial College of the University of Mississippi Law Center shall prepare and conduct a course of training and education for municipal court clerks of the state. The course shall consist of at least twelve (12) hours of training per year. After completion of the first year's requirement, a maximum of six (6) hours training, over and above the required twelve (12) hours, may be carried forward from the previous year. The content of the course of training and when and where it is to be conducted shall be determined by the judicial college. A certificate of completion shall be furnished to those municipal court clerks who complete such course, and each certificate shall be made a permanent record of the minutes of the board of aldermen or city council in the municipality from which the municipal clerk is appointed.

(3) Upon the failure of any person appointed as clerk of the municipal court to file the certificate of completion as provided in subsection (2) of this section, within the first year of appointment, such person shall then not be allowed to carry out any of the duties of the office of clerk of the municipal court

and shall not be entitled to compensation for the period of time during which such certificate remains unfiled.

(4) After August 1, 2015, and each year thereafter, the Administrative Office of Courts shall notify the judicial college of the name of any municipal court clerk who has not complied with the requirements of Section 9-1-46. The Mississippi Judicial College shall not provide such clerk with a certificate of completion of course work until such time that the Administrative Office of Courts has reported that the clerk is in compliance with the requirements of Section 9-1-46. Further, the Administrative Office of Courts shall report the names of all noncompliant clerks to the State Auditor and to the mayor of the municipality that employs the clerk.

SOURCES: Laws, 1992, ch. 423, § 1; Laws, 1996, ch. 309, § 1; Laws, 2014, ch. 457, § 71, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added (4).

§ 21-23-19. Disposition of parking violations.

ATTORNEY GENERAL OPINIONS

A private contractor hired by a municipality to operate public parking may not issue traffic tickets or citations. A city could authorize the contractor to immobilize or tow illegally parked vehicles if requested by law enforcement. Kohnke, May 27, 2005, A.G. Op. 05-0186.

Issuance of parking tickets is an exercise of the municipality's essential power to police the conduct of its citizens and cannot be delegated to a private contractor. Kohnke, May 27, 2005, A.G. Op. 05-0186 affirmed. Kohnke, Feb. 23, 2006, A.G. Op. 05-0343.

§ 21-23-23. Municipal Court Collections Fund created; purpose; source of funds.

(1) There is created in the State Treasury a special fund to be known as the Municipal Court Collections Fund, which shall be administered by the Department of Revenue. The purpose of the fund shall be to provide support for salaries of municipal court personnel, for the purchase, operation and maintenance of software and equipment, for facility planning and improvement, and for other expenses incurred for the purpose of collecting fines and assessments within the municipal court system. Monies in the fund shall be expended by the Department of Revenue, upon appropriation by the Legislature. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature for the purposes of funding the Municipal Court Collections Program;

(b) The interest accruing to the fund;

(c) Monies received under the provisions of Section 99-19-73;

(d) Monies received from the federal government;

(e) Donations; and

(f) Monies received from such other sources as may be provided by law.

(2) The Department of Revenue shall promulgate rules and procedures relating to the administration of the special fund and the disbursement of monies in the fund to participating municipalities. The Department of Revenue shall promulgate rules and procedures to insure that the municipal court system of a participating municipality practices proper and effective collection procedures for the collection of fines and other assessments. If a municipality uses its own employees to collect delinquent fines and other assessments owed to the municipality, then it may use monies from the fund to defray the costs associated with these collection actions. In addition, the governing authority of a participating municipality shall contract with a private attorney or private collection agent or agency to collect delinquent criminal fines and other assessments as provided in Section 21-17-1(6) in order to qualify for monies from the fund. The maximum amount that a municipality may receive from the special fund shall be an amount equal to the deposits made into the fund by that municipality, less five percent (5%) to be retained by the Department of Revenue to defray the costs of administering the special fund. Interest earned on the special fund and any additional monies deposited into the fund shall remain in the fund and shall be used for the benefit of the Department of Revenue, at the discretion of the Commissioner of Revenue. Notwithstanding the preceding provision, the Department of Revenue is authorized to award excess monies in the Municipal Court Collections Fund as a grant to participating municipalities so long as the use of those funds are consistent with the purpose of the Municipal Court Collections Program.

SOURCES: Laws, 2014, ch. 512, § 2, eff from and after July 1, 2014.

CHAPTER 25

Fire Departments and Fire Districts

GENERAL PROVISIONS

§ 21-25-1. Fire marshal.

ATTORNEY GENERAL OPINIONS

A municipality may contract with a private non-profit volunteer fire department to provide fire protection services within the municipal corporate limits; the rules and regulations applicable to the department should be contained in the by-laws of that corporation, as well as in the contract for services with the municipality. Threat, Apr. 1, 2005, A.G. Op. 05-0136.

A part-time police officer would not be prohibited from also serving as chief of the volunteer fire department within the same municipality. Davis, Mar. 17, 2006, A.G. Op. 06-0010.

§ 21-25-3. Establishment and maintenance of fire departments; reimbursement of training expenses.

ATTORNEY GENERAL OPINIONS

A town can provide fire protection for a community 3 to 4 miles outside its corporate limits and situated in another county. If the community is located within a fire protection district, then that district would be its primary provider of fire protection. In such case, the town fire department could still assist with fire protection in said district. Ready, Oct. 7, 2005, A.G. Op. 05-0421.

§ 21-25-5. Fire departments authorized to go outside municipal limits; liability.

ATTORNEY GENERAL OPINIONS

A town can provide fire protection for a community 3 to 4 miles outside its corporate limits and situated in another county. If the community is located within a fire protection district, then that district would be its primary provider of fire protection. In such case, the town fire department could still assist with fire protection in said district. Ready, Oct. 7, 2005, A.G. Op. 05-0421.

INTERLOCAL AGREEMENTS BETWEEN MUNICIPALITIES AND RURAL WATER ASSOCIATIONS

§ 21-25-51. Purpose; interlocal agreements authorized.

ATTORNEY GENERAL OPINIONS

A municipality may enter into an interlocal agreement with a rural water association, as contemplated by Section 21-25-51, to upgrade their respective water systems for the purpose of improving local fire protection. Tyner, Oct. 20, 2006, A.G. Op. 06-0501.

CHAPTER 27

Public Utilities and Transportation

GENERAL PROVISIONS

§ 21-27-3. Poles, posts and wires.

ATTORNEY GENERAL OPINIONS

If municipal governing authorities determine that a utility is an "entire waterworks system", then its acquisition by eminent domain would be a "purchase" requiring an election by the voters under Section 21-27-3 (1972). Helmert, Oct. 28, 2005, A.G. Op. 05-0518.

§ 21-27-7. Waterworks.

ATTORNEY GENERAL OPINIONS

If municipal governing authorities determine that a utility is an "entire waterworks system", then its acquisition by eminent domain would be a "purchase" requiring an election by the voters under Section 21-27-3 (1972). Helmert, Oct. 28, 2005, A.G. Op. 05-0518.

MUNICIPALLY OWNED UTILITIES

§ 21-27-13. Establishment of public utility commission; qualifications, appointment, terms of office, powers and duties, compensation and bonds of commissioners; exercise of powers when commission not established.

ATTORNEY GENERAL OPINIONS

It is not legally permissible for one who is not a qualified elector of the municipality to serve as a municipal utilities commissioner. Miss. Code Ann. § 21-27-13 requires that members of a municipal utilities commission "shall be qualified electors of the municipality" in language that is plain and unambiguous and conveys a clear and definite meaning. The meaning of an unambiguous statute cannot be restricted or enlarged. Collins, February 2, 2007, A.G. Op. #07-00016, 2007 Miss. AG LEXIS 3.

A utility commission created under Miss. Code Ann. § 21-27-13 et seq. is authorized to work on the "public utility system" and not on privately owned lines and equipment. In order to ensure the "safe, economic and efficient operation" of the system it may sometimes be necessary for the commission to enter private property to address emergencies, but the commission has no authority to charge for such services. Montgomery, March 30, 2007, A.G. Op. #07-00131, 2007 Miss. AG LEXIS 93.

§ 21-27-17. Powers and duties of commission.

ATTORNEY GENERAL OPINIONS

A utility commission created under Miss. Code Ann. § 21-27-13 et seq. is authorized to work on the "public utility system" and not on privately owned lines and equipment. In order to ensure the "safe, economic and efficient operation" of the system it may sometimes be necessary for the commission to enter private property to address emergencies, but the commission has no authority to charge for such services. Montgomery, March 30, 2007, A.G. Op. #07-00131, 2007 Miss. AG LEXIS 93.

§ 21-27-23. General powers of municipality as to creation, maintenance, and operation of public utility systems.

ATTORNEY GENERAL OPINIONS

Once a fee for the connection of property within a municipality to a sewer has been established, the municipality may not forgive or waive those fees or rates or give a credit for future sewer bills for the equivalent months or years in which a citizen has paid and not been hooked up. Collins, Apr. 29, 2005, A.G. Op. 05-0209.

A municipal public utility commission does not have the authority to authorize the issuance of bonds in the name of the city. Odom, Mar. 17, 2006, A.G. Op. 06-0001.

A municipality may terminate utility services for nonpayment of a bill after giving notice and an opportunity to be heard in a meaningful time and manner to the utility customer. However, a municipality may not require a landlord to pay a tenant's water bill if the tenant is the customer of the utility system, and cannot refuse to provide water services to a tenant because a landlord or prior tenant has not paid a water bill. Accordingly, a municipality may not include a provision that precludes reinstatement of water/sewer services to said rental unit until the account applicable thereto is brought current. Povall, July 28, 2006, A.G. Op. 06-0315.

A governing authority may impose a flat-rate sewer surcharge to all residents, regardless of whether the resident is connected to the municipal system or not, but the utility system should not result in a profit-making venture. Dye, March 27, 2007, A.G. Op. #07-00117, 2007 Miss. AG LEXIS 94.

§ 21-27-25. Borrowing money for improvement, extension, repair or stockpiling fuel of system.

ATTORNEY GENERAL OPINIONS

A municipal public utility commission may only exercise such powers as are specifically granted by statute, and no specific authority can be found which would permit a commission to borrow money. Odom, Mar. 17, 2006, A.G. Op. 06-0001.

§ 21-27-27. Free service.

ATTORNEY GENERAL OPINIONS

Once a fee for the connection of property within a municipality to a sewer has been established, the municipality may not forgive or waive those fees or rates or give a credit for future sewer bills for the equivalent months or years in which a citizen has paid and not been hooked up. Collins, Apr. 29, 2005, A.G. Op. 05-0209.

Although no specific authority can be found which would enable a city to waive fees for municipal water and sewer service provided to hurricane victims, the rates may be amended to provide for alternate payment schedules or other accommodations for individuals meeting certain criteria. Trotter, Sept. 23, 2005, A.G. Op. 05-0484.

§ 21-27-33. Municipality may dispose of public utility systems.

ATTORNEY GENERAL OPINIONS

Municipalities may extend water and sewer services to residents located in remote areas within the corporate limits; however, a town is not required to do so if same is not economically reasonable. Chandler, Apr. 1, 2005, A.G. Op. 05-0127.

A town may lease water system improvements to a private community water association in accordance with the provision of Section 21-27-33. While the lease is not required to be at fair market value, it must be under such terms and conditions and with such safeguards as will best promote and protect the public interest. Helmert, Oct. 28, 2005, A.G. Op. 05-0518.

METROPOLITAN AREA WASTE DISPOSAL

§ 21-27-163. Definitions.

JUDICIAL DECISIONS

1. Metropolitan area plan.

Reading the Metropolitan Area Waste Disposal Act, Miss. Code Ann. §§ 21-27-189 and 21-27-163(m), together, if a city chooses to exercise the authority granted by the Legislature to operate and maintain a municipal sewage system, then the city must do so in a manner consistent with the water-quality standards established by the Federal Water Pollution Control Act, in accordance with its metropolitan-area plan, and with any rules and regulations adopted by the city itself. Fortenberry v. City of Jackson, 71 So. 3d 1211 (Miss. Ct. App. 2010), reversed by 71 So. 3d 1196, 2011 Miss. LEXIS 88 (Miss. 2011).

§ 21-27-189. Other powers and authority of municipality.

JUDICIAL DECISIONS

1. Interpretation.

City was immune from homeowners' claims arising from sewer back-ups as a result of a city ordinance requiring larger sewer lines than were present on the homeowners' property because Jackson, Miss., Ordinances art. II, § 205(4) exempted the homeowners' subdivision from the ordinance, so the ordinance did not cause the city's maintenance of the city's sewage system to be a ministerial function. Fortenberry v. City of Jackson, 71 So. 3d 1196 (Miss. 2011).

City was immune from homeowners' claims arising from sewer back-ups because (1) Miss. Code Ann. § 21-27-189(b) gave the city discretion to maintain the city's sewage system, and (2) the city's duty to maintain the system did not become ministerial once the city made the decision to operate a sewage system. Fortenberry v. City of Jackson, 71 So. 3d 1196 (Miss. 2011).

Reading the Metropolitan Area Waste Disposal Act, Miss. Code Ann. §§ 21-27-189 and 21-27-163(m), together, if a city chooses to exercise the authority granted by the Legislature to operate and maintain a municipal sewage system, then the city must do so in a manner consistent with the water-quality standards established by the Federal Water Pollution Control Act, in accordance with its metropolitan-area plan, and with any rules and regulations adopted by the city itself. Fortenberry v. City of Jackson, 71 So. 3d

1211 (Miss. Ct. App. 2010), reversed by 71 So. 3d 1196, 2011 Miss. LEXIS 88 (Miss. 2011).

Analysis of the Metropolitan Area Waste Disposal Act, Miss. Code Ann. § 21-27-189(b), provides that if a municipality exercises the enumerated powers and authority outlined by the statute, the exercise of such power, i.e., to construct, operate, and maintain the sewerage system, must be done in a manner consistent with the metropolitan area plan, but a municipality possesses the discretion under this statute as to whether or not it wants to run its own sewage system; sewage operations could be run by the private sector, and if the municipality chooses to exercise this authority, compliance with the applicable water-quality and pollution-control laws is required to protect the public health and water quality. Fortenberry v. City of Jackson, 71 So. 3d 1211 (Miss. Ct. App. 2010), reversed by 71 So. 3d 1196, 2011 Miss. LEXIS 88 (Miss. 2011).

Circuit court erred in granting a city summary judgment in landowners' action to recover for the damages they sustained when raw sewage flooded their homes due to blockage in the city's sewage lines because a genuine issue of material fact existed as to whether the city violated a ministerial duty that it articulated and imposed on itself in a subdivision ordinance as to minimum-design standards and sewage pipe size, and the record reflected evidence that the city breached a ministerial duty set forth in its own ordinance that contained no element of choice; the circuit court erred in its interpretation and application of only a portion of the Metropolitan Area Waste Disposal Act, Miss. Code Ann. § 21-27-189, in failing to apply the related statutes referred to in the text of § 21-27-189, and in ignoring the city's requirement to abide by the Act because the plain language of the grant of authority in § 21-27-189 entailed compliance with the metropolitan-area plan, federal law, and city rules and regulations enacted to ensure compliance with the plan, and in the exercise of that statutory authority to adopt rules and regulations locally, the city adopted its own minimum standards as provided in a subdivision ordinance that set forth no discretion or choice as to minimum-design standards, stating that the sewerage system pipes had to conform to a minimum pipe size of eight inches. Fortenberry v. City of Jackson, 71 So. 3d 1211 (Miss. Ct. App. 2010), reversed by 71 So. 3d 1196, 2011 Miss. LEXIS 88 (Miss. 2011).

CHAPTER 29

Employees' Retirement and Disability Systems

ARTICLE 3.

FIREMEN'S AND POLICEMEN'S DISABILITY AND RELIEF FUNDS.

§ 21-29-129. Who entitled to benefits.

Every member of said fire department and police department including its officers, but not including the governing authorities of said city on account of their relation as such to said fire department and/or police department, who are members of the disability and relief fund for firemen and policemen shall

come under the provisions and benefits of this article and shall receive all benefits provided for in this article. All firemen and policemen who are employed in the said fire department or police department after adoption of a resolution by the municipality in accordance with the provisions of subsection (c) of Section 21-29-17 shall not become members of the disability and relief fund for firemen and policemen.

However, in any municipality having a population of not less than twenty-eight thousand (28,000) and not more than thirty thousand (30,000) according to the 1960 decennial census and located in a county having an assessed valuation in 1969 of not less than Eighty-five Million Dollars ($85,000,000.00) and not more than Ninety Million Dollars ($90,000,000.00), any former member of the fire or police department with thirteen (13) or more consecutive and paid years longevity retirement benefits in the retirement system, who remains in public service of such municipality in an elected capacity which includes ex officio chief of police or fire department, such elected public service shall be credited under this article, when the member pays into the system all employer and employee contributions with any interest or earnings thereon based upon the salary he received during the last six (6) months of his employment as a fireman or policeman prior to his becoming an elected official, and his retirement benefits shall be computed upon the salary so received.

SOURCES: Codes, 1942, § 3484; Laws, 1940, ch. 287; Laws, 1971, ch. 379, § 1; Laws, 1976, ch. 463, § 7, eff from and after passage (approved May 22, 1976).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in the first paragraph. The reference to "Section 27-29-17" was changed to "Section 21-29-17." The Joint Committee ratified the correction at its August 5, 2008, meeting.

ARTICLE 5.

DISABILITY AND RELIEF FUND FOR FIREMEN AND POLICEMEN UNDER LAWS 1930, CHAPTER 55.

SEC.
21-29-237. Persons entitled to benefits.

§ 21-29-229. Tax on premiums of fire and lightning insurers.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 21-29-233. Duty of state tax commission.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 21-29-237. Persons entitled to benefits.

Every member of said fire department and police department including its officers, but not including the governing authorities of said city on account of their relation as such to said fire department and/or police department, who are members of the disability and relief fund for firemen and policemen shall come under the provisions and benefits of this article, and shall receive all benefits provided for in this article. All firemen and policemen who are employed in the said fire department or police department after adoption of a resolution by the municipality in accordance with the provisions of subsection (c) of Section 21-29-17 shall not become members of the disability and relief fund for firemen and policemen.

SOURCES: Codes, 1942, § 3494-15; Laws, 1924, ch. 189; Laws, 1930, ch 55, § 13; Laws, 1976, ch. 463, § 11, eff from and after passage (approved May 22, 1976).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in the last sentence. The reference to "Section 27-29-17" was changed to "Section 21-29-17." The Joint Committee ratified the correction at its August 5, 2008, meeting.

ARTICLE 7.

MISCELLANEOUS PROVISIONS.

SEC.

§ 21-29-316. Rollover distribution of accumulated contributions to eligible retirement plan or individual retirement account.

(1) Pursuant to the Unemployment Compensation Amendments of 1992 (Public Law 102-318 (UCA)), a member or the spouse of a member who is an eligible beneficiary entitled to a refund under Article 1, 3 or 5 of this chapter may elect on a form prescribed by the board under rules and regulations

established by the board, to have an eligible rollover distribution of accumulated contributions payable under this section paid directly to an eligible retirement plan, as defined under applicable federal law, or an individual retirement account. If the member or the spouse of a member who is an eligible beneficiary makes that election and specifies the eligible retirement plan or individual retirement account to which the distribution is to be paid, the distribution will be made in the form of a direct trustee-to-trustee transfer to the specified eligible retirement plan. A non-spouse beneficiary may elect to have an eligible rollover distribution paid in the form of a direct trustee-to-trustee transfer to an individual retirement account established to receive the distribution on behalf of the non-spouse beneficiary. Flexible rollovers under this subsection shall not be considered assignments under Section 21-29-307.

(2) From and after July 1, 2001, subject to the rules adopted by the board of trustees, any plan under this chapter shall accept an eligible rollover distribution or a direct transfer of funds from another eligible retirement plan or an individual retirement account in payment of all or a portion of the cost to repay a refund as permitted by the plan. The plans may only accept rollover payments in an amount equal to or less than the balance due for reinstatement of service credit. The rules adopted by the board of trustees shall condition the acceptance of a rollover or transfer from another eligible retirement plan on the receipt of information necessary to enable the system to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

SOURCES: Laws, 2001, ch. 438, § 11; Laws, 2002, ch. 313, § 7; Laws, 2008, ch. 359, § 8, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment, in (1), substituted "makes that election" for "makes such election" and "the distribution is to be paid" for "such distribution is to be paid" in the second sentence, and added the next-to-last sentence.

§ 21-29-331. Persons to whom benefits payable in event of death or disqualification of designated beneficiary.

(1) Except as otherwise provided in subsection (2) of this section, where benefits are payable to a designated beneficiary or beneficiaries under Article 1, 3 or 5 of this chapter and the designated beneficiary or beneficiaries as provided by the member on the most recent form filed with the system is deceased or otherwise disqualified at the time such benefits become payable, the following persons, in descending order of precedence, shall be eligible to receive such benefits:

(a) The surviving spouse of the member or retiree;

(b) The children of the member or retiree or their descendants, per stirpes;

(c) The brothers and sisters of the member or retiree or their descendants, per stirpes;

(d) The parents of the member or retiree;

(e) The executor or administrator on behalf of the member or retiree's estate;

(f) The persons entitled by law to distribution of the member or retiree's estate.

(2) Any monthly benefits payable to a beneficiary who dies prior to cashing his or her final check(s) and/or any additional benefits payable pursuant to a cost-of-living adjustment still payable at the death of a beneficiary receiving monthly benefits shall be paid as follows:

(a) The surviving spouse of the beneficiary;

(b) The children of the beneficiary or their descendants, per stirpes;

(c) The brothers and sisters of the beneficiary or their descendants, per stirpes;

(d) The parents of the beneficiary;

(e) The executor or administrator on behalf of the beneficiary's estate;

(f) The persons entitled by law to distribution of the beneficiary's estate.

(3) In the event no claim is made by any individual listed in subsection (2) of this section, a distribution may be made pursuant to the provisions of subsection (1) of this section.

(4) Payment under the provisions of this section shall bar recovery by any other person of the benefits distributed. Payment of benefits made to one or more members of a class of individuals are made on behalf of all members of the class. Any members of the class coming forward after payment is made must look to those who received the payment.

SOURCES: Laws, 2010, ch. 528, § 13, eff from and after July 1, 2010.

§ 21-29-333. Waiver of benefits from the general municipal retirement system or firemen's and policemen's disability and relief fund.

(1) A retiree or beneficiary may, on a form prescribed by and filed with the Executive Director of the Public Employees' Retirement System, irrevocably waive all or a portion of any benefits from the general municipal retirement system or a firemen's and policemen's disability and relief fund to which the retiree or beneficiary is entitled. The waiver shall be binding on the heirs and assigns of any retiree or beneficiary and the same must agree to forever hold harmless the fund and the Public Employees' Retirement System of Mississippi from any claim to the waived retirement benefits.

(2) Any waiver under this section shall apply only to the person executing the waiver. A beneficiary shall be entitled to benefits according to the option selected by the member at the time of retirement. However, a beneficiary may, at the option of the beneficiary, execute a waiver of benefits under this subsection.

(3) The fund shall retain all amounts that are not used to pay benefits because of a waiver executed under this subsection.

(4) The Board of Trustees of the Public Employees' Retirement System may provide rules and regulations for the administration of waivers under this section.

SOURCES: Laws, 2010, ch. 528, § 14, eff from and after July 1, 2010.

CHAPTER 31

Civil Service

GENERAL PROVISIONS

§ 21-31-1. Adoption of civil service system mandated in certain municipalities.

ATTORNEY GENERAL OPINIONS

The Chief of Police must be included in the civil service system of the city of Ocean Springs because the more specific provisions of Miss. Code Ann. § 21-31-13, concerning civil service systems in a handful of described municipalities, control over the more general provisions of Miss. Code Ann. § 21-3-3, which applies to all code charter municipalities in Mississippi. Edwards, March 30, 2007, A.G. Op. #07-00152, 2007 Miss. AG LEXIS 134.

§ 21-31-7. Election of officers and meetings of commission; secretary; board of examiners.

ATTORNEY GENERAL OPINIONS

A mayor and board of aldermen may not enact personnel policies which would interfere with a board of examiners as a three person body to direct the conduct of employment or promotional examinations. Brown, July 29, 2005, A.G. Op. 05-0352.

Any regulation or rule taking away the authority of two members of board of examiners would be contrary to the provisions of Section 21-3-7. Brown, July 29, 2005, A.G. Op. 05-0352.

§ 21-31-9. Duties of the commission.

ATTORNEY GENERAL OPINIONS

A mayor and board of aldermen may not enact personnel policies which would interfere with a board of examiners as a three person body to direct the conduct of employment or promotional examinations. Brown, July 29, 2005, A.G. Op. 05-0352.

Any regulation or rule taking away the authority of two members of board of examiners would be contrary to the provisions of Section 21-3-7. Brown, July 29, 2005, A.G. Op. 05-0352.

The city manager holds the authority to set and approve minimum job qualifications, requirements and job descriptions for municipal jobs other than those created by the council under Miss. Code Ann. § 21-9-45. A city manager may reject a job candidate list and form a new one using new job requirements, provided that the

new job requirements are appropriate and consistent with state law, the proposed action does not violate the Civil Service Commission regulation, and the new list contains candidates that meet the criteria set forth by the Civil Service Commission. Tynes, March 9, 2007, A.G. Op. #07-00092, 2007 Miss. AG LEXIS 97.

§ 21-31-11. Accommodations, supplies and clerical aid to be furnished to commission.

ATTORNEY GENERAL OPINIONS

Hiring of legal clerk to provide clerical assistance to the civil service commission of a city would be authorized if the clerk does not provide legal representation to the civil service commission or its members and otherwise does not engage in the practice of law in any capacity, including providing legal analysis or the writing of briefs. Hilburn, Apr. 8, 2005, A.G. Op. 05-0154.

§ 21-31-13. Coverage afforded by civil service system.

ATTORNEY GENERAL OPINIONS

The Chief of Police must be included in the civil service system of the city of Ocean Springs because the more specific provisions of Miss. Code Ann. § 21-31-13, concerning civil service systems in a handful of described municipalities, control over the more general provisions of Miss. Code Ann. § 21-3-3, which applies to all code charter municipalities in Mississippi. Edwards, March 30, 2007, A.G. Op. #07-00152, 2007 Miss. AG LEXIS 134.

§ 21-31-23. Removal, suspension, demotion, and discharge.

JUDICIAL DECISIONS

1. In general.
3. Judicial review.
4. Standard and scope of review.

1. In general.

Where plaintiff fireman alleged defendants, a city, its mayor, and an alderman, wrongfully demoted him in violation of his substantive due process rights, because Miss. Code Ann. § 21-31-23 created vested certain employment rights and there was no evidence the fireman was not vested, a substantive due process claim could proceed. Montgomery v. Mississippi, 498 F. Supp. 2d 892 (S.D. Miss. 2007).

3. Judicial review.

In a case in which a city employee appealed the affirmation of a decision by a city civil service commission to suspend him for three days without pay for using profanity on a city radio, sufficient evidence was presented for the commission to find that it was the employee's inappropriate comment over a city radio, and not other factors such as disagreements with his supervisor, or his religious or political beliefs, that led to the suspension. Young v. City of Biloxi, 22 So. 3d 1269 (Miss. Ct. App. 2009).

Trial court erred in finding that a police officer's suspension was "implicitly affirmed" by a civil service commission because the suspension was not appealed to the commission as required by law; because the only disciplinary action that the officer appealed was the officer's termination, the trial court was strictly confined to a determination of whether the termination was made in good faith for cause. City of Vicksburg v. Lane, 11 So. 3d 162 (Miss. Ct. App. 2009).

4. Standard and scope of review.

Order demoting a police officer from captain to lieutenant after the officer failed to comply with a readiness inspection was upheld where substantial evidence existed to support the finding that the demotion was made in good faith for cause and was not based on political or religious reasons; there was no evidence that the demotion was retaliatory. Patterson v. City of Biloxi, 965 So. 2d 765 (Miss. Ct. App. 2007).

§ 21-31-27. Political services and contributions.

ATTORNEY GENERAL OPINIONS

The Chief of Police must be included in the civil service system of the city of Ocean Springs because the more specific provisions of Miss. Code Ann. § 21-31-13, concerning civil service systems in a handful of described municipalities, control over the more general provisions of Miss. Code Ann. § 21-3-3, which applies to all code charter municipalities in Mississippi. Edwards, March 30, 2007, A.G. Op. #07-00152, 2007 Miss. AG LEXIS 134.

CIVIL SERVICE SYSTEM IN CERTAIN OTHER MUNICIPALITIES

§ 21-31-51. Adoption of civil service system mandated in certain municipalities.

ATTORNEY GENERAL OPINIONS

The Chief of Police must be included in the civil service system of the city of Ocean Springs because the more specific provisions of Miss. Code Ann. § 21-31-13, concerning civil service systems in a handful of described municipalities, control over the more general provisions of Miss. Code Ann. § 21-3-3, which applies to all code charter municipalities in Mississippi. Edwards, March 30, 2007, A.G. Op. #07-00152, 2007 Miss. AG LEXIS 134.

§ 21-31-61. Coverage afforded by civil service system.

ATTORNEY GENERAL OPINIONS

For the purposes of Section 21-31-61, administrative employees would be those who execute the orders and ordinances of the policy-making body of the municipality, which is the city council. No authority can be found for a municipal governing authority to create a "public office" that is not otherwise provided for by law. Kohnke, Feb. 24, 2006, A.G. Op. 06-0045.

§ 21-31-71. Removal, suspension, demotion, and discharge.

JUDICIAL DECISIONS

1. In general.

Circuit court erred in ordering a city, as the appellee, to pay the costs of preparing the transcript for a city fire department employee's appeal. Pursuant to Miss. Code Ann. § 21-31-71, the burden to produce and file the record, including the transcript fell squarely on the civil service commission. Fields v. City of Clarksdale, 133 So. 3d 373 (Miss. Ct. App. 2014).

Miss. Unif. Cir. & Cty. R. 5.03 and Miss. Code Ann. § 21-31-71 were not the applicable standards of review in an appeal because, while the case did involve an appeal from an administrative agency, the court was not reviewing a decision from the administrative agency. Fields v. City of Clarksdale, 133 So. 3d 373 (Miss. Ct. App. 2014).

§ 21-31-75. Political services and contributions.

ATTORNEY GENERAL OPINIONS

The Chief of Police must be included in the civil service system of the city of Ocean Springs because the more specific provisions of Miss. Code Ann. § 21-31-13, concerning civil service systems in a handful of described municipalities, control over the more general provisions of Miss. Code Ann. § 21-3-3, which applies to all code charter municipalities in Mississippi. Edwards, March 30, 2007, A.G. Op. #07-00152, 2007 Miss. AG LEXIS 134.

CHAPTER 33

Taxation and Finance

ARTICLE 1.

TAXATION.

§ 21-33-1. Date of tax liability.

ATTORNEY GENERAL OPINIONS

An annexation is final and effective for all purposes 10 days after issuance of the decree by the chancery court, or 10 days after final determination of an appeal, except that citizens residing in an annexed area may not participate in future municipal elections as electors or as candidates, unless and until pre-clearance by the U.S. Department of Justice is obtained pursuant to Section 5 of the Voting Rights Act. Mallette, March 2, 2007, A.G. Op. #07-00096, 2007 Miss. AG LEXIS 72, modifying Rafferty, November 27, 2006, A.G. Op. #06-00598, 2006 Miss. AG LEXIS 428, as to the effective date of annexation for all purposes other than voting and candidacy.

§ 21-33-3. Municipal tax forms.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in

the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 21-33-5. Form of land assessment roll.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 21-33-9. Manner of municipal assessment.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 21-33-13. Assessment of private car companies.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 21-33-43. Change of assessments.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 21-33-45. Levy of municipal ad valorem taxes.

The governing authorities of each municipality of this state shall, either at their regular meeting in September of each year or not later than ten (10) days after the final approval of the assessment rolls, levy the municipal ad valorem taxes for the fiscal year next succeeding, and shall, by resolution, fix the tax rate or levy for the municipality and for any other taxing districts of which the municipality may be a part. The rates or levies for the municipality or for any such taxing district shall be expressed in mills or a decimal fraction of a mill, which tax rates, or levies, shall determine the ad valorem taxes to be collected upon each dollar of valuation upon the assessment rolls of the municipality for municipal taxes, and to be collected upon each dollar of valuation as shown upon the assessment rolls of the municipality for each such taxing district, except as to such values as may be exempt, in whole or in part, from certain tax rates or levies. If the rates or levies for the municipality or taxing district are

an increase from the previous fiscal year, then the proposed rate or levy increase shall be advertised in accordance with Section 27-39-203.

In making the levy of taxes, the governing authorities shall specify in such resolution the levy for each purpose as follows:

(a) For general revenue purposes and for general improvements, as authorized by Section 27-39-307.

(b) For school purposes, including all maintenance levies, whether made against the property within such municipality, or within any taxing district embraced in such municipality, as authorized by Section 27-39-307 and Section 37-57-3 et seq.

(c) For municipal bonds and interest thereon, for school bonds and interest thereon, separately for municipal-wide bonds and for the bonds of each school district.

(d) For municipal-wide bonds and interest thereon, other than for school bonds.

(e) For loans, notes or any other obligation, and the interest thereon, if permitted by law.

(f) For special improvement or special benefit levies, as now authorized by law.

(g) For any other purpose for which a levy is lawfully made. If any municipal-wide levy is made for any general or special purpose under the provisions of any law other than Section 27-39-307 each such levy shall be separately stated in the resolution, and the law authorizing same shall be expressly stated therein.

If the governing authorities of any municipality shall not levy the municipal taxes and the district taxes at its regular September meeting, such governing authorities shall levy the same at an adjourned or special meeting not later than ten (10) days after the final approval of the assessment rolls. However, that if such levy be not made on or before September 15 then road and bridge privilege tax license plates may be issued by the tax collector or Department of Revenue, as the case may be, for motor vehicles as defined in the Motor Vehicle Ad Valorem Tax Law of 1958 (Section 27-51-1 et seq.), without collecting or requiring proof of payment of municipal ad valorem taxes until such levy is duly certified to him, and for twenty-four (24) hours thereafter.

In the case of a municipality operating under a special or private charter providing for or authorizing the assessment, levying and collection of ad valorem taxes prior to October in each year, ad valorem taxes for such municipality shall be levied at the time prescribed or authorized by such special or private charter, unless the governing authority of such municipality by resolution adopted and spread of record in its minutes elect to levy ad valorem taxes at the time prescribed hereinbefore in this section. In any event, however, all ad valorem taxes levied by any municipality in this state, shall be levied in the manner required herein regardless of the time when such taxes are levied.

SOURCES: Codes, 1942, §§ 3742-23, 3742-25; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, §§ 23, 25; Laws, 1958, ch. 549, § 2; Laws, 1983, ch. 471, § 8; Laws, 1994, ch. 414, § 5; Laws, 2012, ch. 352, § 2, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment substituted "Section 27-39-203" for "Sections 27-39-203 and 27-39-205" at the end of the first paragraph; and substituted "Department of Revenue" for "State Tax Commission" following "tax collector or" in the last sentence of the next-to-last paragraph.

§ 21-33-47. Certification of tax levy; publishing of same; clerks' liability.

(1) When the governing authorities of any municipality shall have made the levy of municipal taxes by resolution, or for any other taxing district of which the municipality is a part by resolution, the clerk of the municipality shall thereupon immediately certify the same to the tax collector of the municipality, or such other taxing district of which the municipality may be a part.

(2) When a resolution levying ad valorem taxes has been finally adopted by the governing authorities of any municipality embracing, in whole or in part, any other taxing district of which such municipality is a part, the clerk of such municipality shall immediately certify a copy of such resolution to the State Tax Commission, as the law directs. The clerk shall have the resolution of the governing authorities making the levy printed within two (2) weeks after it is entered on the minutes of such governing authorities, and he shall furnish any taxpayer with a copy thereof, upon request. If a newspaper is published within such municipality, then such resolution shall be published in its entirety, at least one, within ten (10) days after its adoption. Instead of publishing the resolution in its entirety, the publication of the resolution may be made as provided in Section 21-17-19. If no newspaper be published within such municipality, then a copy of such resolution, in its entirety, shall be posted by such municipal clerk in at least three (3) public places in such municipality, within ten (10) days after its adoption.

(3) The clerk shall be liable on his bond for any damages sustained by his failure to comply with the requirements of this section. However, failure to thus publish or post the same shall not affect the validity of the levy.

SOURCES: Codes, 1942, §§ 3742-24, 3742-25; Laws, 1950, ch. 492, §§ 24, 25; Laws, 1988, ch. 457, § 5; Laws, 1994, ch. 414, § 6; Laws, 2009, ch. 546, § 4, eff from and after passage (approved Apr. 15, 2009.)

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Amendment Notes — The 2009 amendment added subsection designations; deleted "and a copy thereof to the State Auditor, as the head of the State Department of Audit" from the end of (1); and made a minor stylistic change.

§ 21-33-63. Sale for taxes; sale list.

ATTORNEY GENERAL OPINIONS

Failing to demand a tax deed does not relieve a tax purchaser of any of the obligations of ownership, including the responsibility to ensure the property is maintained in a proper state of habitability or cleanliness so as not to constitute a threat to the health, safety and welfare of the surrounding community. White, Apr. 8, 2005, A.G. Op. 05-0142.

§ 21-33-65. Sale of land not sold at appointed time.

ATTORNEY GENERAL OPINIONS

A municipality may have a tax sale to collect delinquent taxes from past years in any subsequent year after the taxes are delinquent. Davis, Aug. 12, 2005, A.G. Op. 05-0401.

§ 21-33-79. Refund of erroneously paid taxes.

ATTORNEY GENERAL OPINIONS

Where school taxes have been erroneously paid, while no authority can be found for a school district to pay a refund to the municipality, the district, in its discretion, may make such a payment to the municipality, rather than having the refund amount deducted from future installments payable to the district by the municipality. McAlpin, July 8, 2005, A.G. Op. 05-0310.

ARTICLE 3.

CITY UTILITY TAX LAW.

§ 21-33-205. Collection of tax and payment to municipality.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 27-3-4 provides that the terms " 'Chairman of the Mississippi State Tax Commission,' 'Chairman of the State Tax Commission,' "Chairman of the Tax Commission' and 'chairman' appearing in the laws of this state in connection with the performance of the duties and functions by the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission or the Chairman of the Tax Commission shall mean the Commissioner of Revenue of the Department of Revenue."

§ 21-33-207. Procedure for imposition of tax.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by

the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 27-3-4 provides that the terms " 'Chairman of the Mississippi State Tax Commission,' 'Chairman of the State Tax Commission,' "Chairman of the Tax Commission' and 'chairman' appearing in the laws of this state in connection with the performance of the duties and functions by the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission or the Chairman of the Tax Commission shall mean the Commissioner of Revenue of the Department of Revenue."

§ 21-33-209. Procedure for discontinuance of tax.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 27-3-4 provides that the terms " 'Chairman of the Mississippi State Tax Commission,' 'Chairman of the State Tax Commission,' "Chairman of the Tax Commission' and 'chairman' appearing in the laws of this state in connection with the performance of the duties and functions by the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission or the Chairman of the Tax Commission shall mean the Commissioner of Revenue of the Department of Revenue."

ARTICLE 5.

BONDS.

SEC.

§ 21-33-303. Limitation of indebtedness.

JUDICIAL DECISIONS

1. In general.

Although a city proved that it was in good financial condition, as contemplated by Miss. Code Ann. § 21-33-303, annexation of a parcel would require the city to undertake the obligation of the parcel's utility district to provide water service; that would have been a burden to the city. Annexation of the parcel would have hampered the city in meeting its needs and increase costs to current residents. City of Laurel v. Sharon Waterworks Ass'n (In re Extension of the Boundaries of the City of Laurel), 17 So. 3d 529 (Miss. 2009).

ATTORNEY GENERAL OPINIONS

Express statutory provisions limiting the amount of bond issues and making the limitation applicable to all municipalities contained in the general statute supersede special charter provisions regarding the issuance of bonds. Gaylor, Dec. 15, 2006, A.G. Op. 06-0631.

§ 21-33-323. Investment of surplus funds.

(1) Whenever any municipality shall have on hand any bond and interest funds, any funds derived from the sale of bonds, special funds, or any other funds in excess of the sums which will be required for immediate expenditure and which are not needed or cannot by law be used for the payment of the current obligations or expenses of such municipality, the governing authorities of such municipality shall have the power and authority to invest such excess funds in any bonds or other direct obligations of the United States of America or the State of Mississippi, or of any county or municipality of this state, or of any school district, which such county or municipal or school district bonds have been approved by a reputable bond attorney or have been validated by a decree of the chancery court, or in obligations issued or guaranteed in full as to principal and interest by the United States of America which are subject to a repurchase agreement with a qualified depository. In any event the bonds or obligations in which such funds are invested shall mature or be redeemable prior to the time the funds so invested will be needed for expenditure.

(2) However, such excess funds may first be offered for investment in interest-bearing accounts with or through municipal depositories serving in accordance with Section 27-105-353 at a rate of interest not less than a simple interest rate numerically equal to the average bank discount rate on United States Treasury bills of comparable maturity. The rate of interest established herein shall be the minimum rate of interest and there shall be no maximum rate of interest.

(3) Such excess funds may also be invested in interest-bearing accounts in or through state depositories located in such municipality to the same extent as such depositories are eligible for invested state funds.

(4) When bonds or other obligations have been so purchased, the same may be sold or surrendered for redemption at any time by order or resolution of the governing authorities of the municipality, and the mayor of the municipality, when authorized by such order or resolution, shall have the power and authority to execute all instruments and take such other action as may be necessary to effectuate the sale or redemption thereof.

(5) When such bonds or other obligations are sold or redeemed, the proceeds thereof, including accrued interest thereon, shall be paid into the same fund as that from which the investment was made and shall in all respects be dealt with as are other monies in such fund.

(6) Except as hereinafter provided, any interest derived from the investments authorized in this section may, as an alternative, be deposited into the general fund of the municipality. Any interest derived from the investment of sums received under the terms of the federal State and Local Fiscal Assistance Act of 1972 and any subsequent revisions or reenactments of that act shall be paid into the same fund as that from which the investment was made. Any interest derived from the investment of school bond funds shall be handled as provided in Section 37-59-43. Any interest derived from investment of other bond proceeds or from investment of any bond and interest fund, bond reserve

fund or bond redemption sinking fund shall be deposited either in the same fund from which the investment was made or in the bond and interest fund established for payment of the principal or interest on the bonds. Any interest derived from special purpose funds which are outside the function of general municipal government shall be paid into that special purpose fund.

(7) The authority granted by this section shall be cumulative and in addition to any other law relating to the investment of funds by municipalities.

SOURCES: Codes, Hemingway's, 1917, §§ 5893, 5894; 1930, §§ 2503, 2504; 1942, § 3598-14; Laws, 1914, ch. 154; Laws, 1934, ch. 327; Laws, 1942, ch. 225; Laws, 1950, ch. 493, § 14; Laws, 1952, ch. 377; Laws, 1975, ch. 421; Laws, 1977, ch. 426, § 2; Laws, 1988, ch. 393, § 1; Laws, 1990, ch. 416, § 1; Laws, 2007, ch. 426, § 2; Laws, 2012, ch. 413, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment substituted "accounts" for "time certificates of deposit" near the beginning of the first sentence in (2); substituted "interest-bearing accounts" for "time certificate deposits" in (3); and divided the single former paragraph into present (1) through (7).

§ 21-33-325. Borrowing in anticipation of taxes.

The governing authorities of any municipality of this state shall have the power and authority to borrow money for the current expenses of such municipality in anticipation of the ad valorem taxes to be collected for the then current fiscal year. The governing authority of the municipality may borrow such money, as hereinbefore provided, from any available fund in the municipal treasury, or from any other source, and such loan shall be repaid in the manner herein provided. The money so borrowed shall bear interest at a rate not greater than that allowed in Section 75-17-105, Mississippi Code of 1972, and shall be repaid not later than the following March 15, out of the first moneys collected by reason of the tax levy in anticipation of which such money is borrowed, and such money shall be used for no other purpose than the payment of the current expenses of such municipality. The amount borrowed under the provisions of this section shall in no event exceed fifty percent (50%) of the anticipated, but then uncollected, revenue to be produced by the then current tax levy, or levies, against which such money is borrowed. In borrowing money under the provisions hereof, it shall not be necessary to publish notice of intention so to do or to secure the consent of the qualified electors, either by election or otherwise. Such borrowing may be authorized by resolution of the governing authorities and may be evidenced by a negotiable note, or notes, signed and executed in such form as may be prescribed in such resolution. Money may be borrowed in anticipation of ad valorem taxes under the provisions of this section, regardless of whether or not such borrowing shall create an indebtedness in excess of statutory limitations.

Money may likewise be borrowed by the governing authorities of any municipality, as herein provided, for the purpose of paying current interest maturities on any bonded indebtedness of such municipality in anticipation of the collection of taxes for the retirement of such bonded indebtedness and the payment of any interest thereon.

SOURCES: Codes, Hemingway's 1917, § 6068; 1930, §§ 2500, 2501, 2502; 1942 § 3598-13; Laws, 1916, ch. 150; Laws, 1918, ch. 178; Laws, 1926, ch. 272; Laws, 1934, ch. 320; Laws, 1950, ch. 493, § 13; Laws, 1981, ch. 462, § 4; Laws, 1982, ch. 434, § 9; Laws, 1983, ch. 541, § 13; Laws, 1985, ch. 519, § 1; Laws, 1987, ch. 530, eff from and after passage (approved April 20, 1987).

Editor's Note — The former last paragraph of this section was repealed by its own terms, effective August 1, 1987.

§ 21-33-325.1. Borrowing in anticipation of taxes by certain municipalities.

(1) The governing authorities of a municipality that was formerly a census-designated place, as identified by the United States Census Bureau, and is incorporated during calendar year 2011, 2012 or 2013, shall have the power and authority to borrow money for the current expenses of the municipality from the date of incorporation in anticipation of the ad valorem taxes to be collected for the then current fiscal year and the next succeeding fiscal year. The governing authorities of the municipality may borrow such money from any available fund in the municipal treasury, or from any other source, and such loan shall be repaid in the manner provided in subsection (2) of this section.

(2) The money borrowed shall bear interest at a rate not greater than that allowed in Section 75-17-105 and shall be repaid not later than the following March 15, out of the first monies collected by reason of the tax levy in anticipation of which such money is borrowed, and such money shall be used for no other purpose than the payment of the current expenses of such municipality. The amount borrowed under the provisions of this section shall in no event exceed fifty percent (50%) of the anticipated, but then uncollected, revenue to be produced by the then current tax levy, or levies, against which such money is borrowed.

(3) In borrowing money under the provisions of this section, it shall not be necessary to publish notice of intention so to do or to secure the consent of the qualified electors, either by election or otherwise. Such borrowing may be authorized by resolution of the governing authorities and may be evidenced by a negotiable note, or notes, signed and executed in such form as may be prescribed in such resolution. Money may be borrowed in anticipation of ad valorem taxes under the provisions of this section, regardless of whether or not such borrowing shall create an indebtedness in excess of statutory limitations.

(4) Money may likewise be borrowed by the governing authorities of any municipality, as herein provided, for the purpose of paying current interest maturities on any bonded indebtedness of such municipality in anticipation of the collection of taxes for the retirement of such bonded indebtedness and the payment of any interest thereon.

(5) No governing authorities of a municipality shall borrow money or incur indebtedness as prescribed in this section after March 1, 2014.

SOURCES: Laws, 2009, ch. 485, § 1; Laws, 2010, ch. 322, § 1; Laws, 2011, ch. 321, § 1, eff from and after passage (approved Mar. 3, 2011.)

Amendment Notes — The 2010 amendment, in (1), inserted "or 2011" and made a related change; and in (5), substituted "March 1, 2012" for "March 1, 2011."

The 2011 amendment substituted "during calendar year 2011, 2012, or 2013" for "during calendar year 2009, 2010 or 2011" in the first sentence of (1); and substituted "March 1, 2014" for "March 1, 2012" at the end of (5).

§ 21-33-329. Application of article.

ATTORNEY GENERAL OPINIONS

Express statutory provisions limiting the amount of bond issues and making the limitation applicable to all municipalities contained in the general statute supersede special charter provisions regarding the issuance of bonds. Gaylor, Dec. 15, 2006, A.G. Op. 06-0631.

ARTICLE 7.

MUNICIPAL REVOLVING FUND.

SEC.
21-33-401. Municipal revolving fund.

§ 21-33-401. Municipal revolving fund.

(1) There is created in the State Treasury a special fund designated as the "Municipal Revolving Fund."

(2) The Municipal Revolving Fund shall not be considered as a surplus or available funds when adopting a balanced budget as required by law. The State Treasurer shall invest all sums in the Municipal Revolving Fund not needed for the purposes provided for in this section in certificates of deposit, repurchase agreements and other securities as authorized in Section 27-105-33(d) or 7-9-103, as the State Treasurer may determine to yield the highest market rate available. Interest earned on this fund shall be deposited by the State Treasurer into the State General Fund.

(3) The Municipal Revolving Fund shall be distributed annually, during the month of October, to all municipalities on a population basis, using the latest federal census in computations, taking into consideration the entire population of each municipality in the state, and taking into consideration municipalities that have been incorporated since the last federal census, or will be incorporated before the next federal census, in which case the population shall be the official count used in procuring the charter of incorporation, and also taking into consideration any county seat that is not an incorporated municipality as though the county seat were an incorporated municipality. In making distribution to an unincorporated county seat, however, the funds computed to be due to the county seat shall be paid to the county treasury in which the county seat is located.

Funds made available to municipalities under the provisions of this section may be used for any lawful municipal purpose, except that where funds are made available by reason of the location of an unincorporated county seat in any county, the board of supervisors in that county shall use the funds for road, bridge and street construction or maintenance.

(4) Unexpended funds in the Municipal Revolving Fund at the end of a fiscal year shall not lapse into the State General Fund but shall remain in the fund for use under this section; provided, however, in fiscal year 2009 the provisions of this subsection shall not be applicable until the Working Cash-Stabilization Fund, created in Section 27-103-203, balance has reached a level of funding that is seven and one-half percent (7-½%) of the General Fund appropriations for such fiscal year.

SOURCES: Codes, 1942, § 3742-51; Laws, 1958, ch. 528, §§ 1-4; Laws, 1970, ch. 497, § 1; Laws, 1984, ch. 488, § 165; Laws, 2008, ch. 455, § 4, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment rewrote the section.

CHAPTER 35

Municipal Budget

SEC.

§ 21-35-15. Expenditure of funds.

ATTORNEY GENERAL OPINIONS

The ultimate responsibility for any violations of the provisions of Section 21-35-1 et seq. rests with either the members of the governing authority authorizing unlawful expenditures in excess of budgeted amounts or with the clerk (or the appropriate individual of the fiscal or finance department established pursuant to Section 21-17-15) in issuing warrants in excess of budgeted amounts, or with all such officers or employees. Crisler, Mar. 24, 2006, A.G. Op. 06-0033.

§ 21-35-17. Budget estimates not to be exceeded; liability therefor.

ATTORNEY GENERAL OPINIONS

The ultimate responsibility for any violations of the provisions of Section 21-35-1 et seq. rests with either the members of the governing authority authorizing unlawful expenditures in excess of budgeted amounts or with the clerk (or the appropriate individual of the fiscal or finance department established pursuant to Section 21-17-15) in issuing warrants in excess of budgeted amounts, or with all such

officers or employees. Crisler, Mar. 24, 2006, A.G. Op. 06-0033.

§ 21-35-27. Expenditures for last year of term are limited.

No board of governing authorities of any municipality shall expend from, or contract an obligation, against the budget made and published by it during the last year of the term of office of such governing authorities, between the first day of April and the first day of the following July that is not on a weekend, a sum exceeding one-fourth (¼) of any item of the budget made and published by it, except in cases of emergency provided for in Section 21-35-19. The city clerk of any municipality is hereby prohibited from issuing any warrant contrary to the provisions of this section.

The provisions of this section shall not apply to a contract, lease or lease-purchase contract entered into pursuant to Section 31-7-13 or to seasonal purchases or expenditures.

SOURCES: Codes, 1942, § 9121-15; Laws, 1950, ch. 497, § 15; Laws, 1984 ch. 480, § 2; Laws, 2000, ch. 428, § 2; Laws, 2001, ch. 597, § 1; Laws, 2006, ch. 558, § 1; Laws, 2010, ch. 319, § 6, eff July 22, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 22, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 319, § 6.

Amendment Notes — The 2010 amendment, in the first sentence, substituted "first day of the following July" for "first Monday of the following July" and inserted "that is not on a weekend."

§ 21-35-31. Annual audits or reports required; noncompliance; authority to withhold from allocations and payments payable to municipality certain amount to pay cost of audit or report.

[For municipal fiscal years commencing before October 1, 2009, this section shall read as follows:]

The governing authorities of every municipality in the state shall have their books audited annually, prior to the close of the next succeeding fiscal year, either by a competent accountant approved by the State Auditor or by a certified public accountant, who has paid a privilege tax as such in this state, and shall pay for same out of the General Fund. No advertisement shall be necessary before entering into such contract, but same shall be entered into as a private contract. Said audit shall be made upon a uniform formula set up and promulgated by the State Auditor, as the head of the State Department of Audit, or the director thereof, appointed by him, as designated and defined in Title 7, Chapter 7, of the Mississippi Code of 1972, or any office or officers hereafter designated to replace or perform the duties imposed by said chapter. Provided, however, any municipality with a population of three thousand

(3,000) or less may employ a competent accountant or auditor, approved by the State Auditor, to prepare annually a compilation report and a compliance letter, in a format prescribed by the State Auditor, in lieu of an annual audit when such audit will be a financial hardship on the municipality. Two (2) copies of said audit or compilation shall be mailed to the said State Auditor within thirty (30) days after completion of said audit. Said State Auditor shall, at the end of each fiscal year, submit to the Legislature a composite report showing any information concerning municipalities in this state that he might deem pertinent and necessary to the Legislature for use in its deliberations. A synopsis of said audit, in a format prescribed by the State Auditor, shall be published within thirty (30) days by the governing authorities of such municipalities in a newspaper published in such municipalities or, if no newspaper be published in any such municipality, in any newspaper having a general circulation published in the county wherein such municipality is located. The publication of the audit may be made as provided in Section 21-17-19, Mississippi Code of 1972. Such publication shall be made one (1) time, and the governing authorities of such municipalities shall be authorized to pay only one-half (½) of the legal rate prescribed by law for such legal publication.

[For municipal fiscal years commencing on or after October 1, 2009, this section shall read as follows:]

(1) The governing authority of every municipality in the state shall have the municipal books audited annually, before the close of the next succeeding fiscal year, in accordance with procedures and reporting requirements prescribed by the State Auditor. The municipality shall pay for the audit or report out of its general fund. No advertisement shall be necessary before entering into the contract, and it shall be entered into as a private contract. The audit or report shall be made upon a uniform formula set up and promulgated by the State Auditor, as the head of the State Department of Audit, or the director thereof, appointed by him, as designated and defined in Title 7, Chapter 7, Mississippi Code of 1972, or any office or officers hereafter designated to replace or perform the duties imposed by said chapter. Two (2) copies of the audit or report shall be mailed to the said State Auditor within thirty (30) days after completion. The State Auditor, at the end of each fiscal year, shall submit to the Legislature a composite report showing any information concerning municipalities in this state that the Auditor deems pertinent and necessary to the Legislature for use in its deliberations. A synopsis of the audit or report, in a format prescribed by the State Auditor, shall be published within thirty (30) days by the governing authority of each municipality in a newspaper published in the municipality or, if no newspaper is published in a municipality, in any newspaper having a general circulation published in the county wherein the municipality is located. The publication of the audit or report may be made as provided in Section 21-17-19. Publication shall be made one (1) time, and the governing authority of each municipality shall be authorized to pay only one-half (½) of the legal rate prescribed by law for such legal publication.

(2) It shall be the duty of the State Auditor to determine whether each municipality has complied with the requirements of subsection (1) of this section. If upon examination the State Auditor determines that a municipality has not initiated efforts to comply with the requirements of subsection (1), the State Auditor shall file a certified written notice with the clerk of the municipality notifying the governing authority of the municipality that a certificate of noncompliance will be issued to the State Tax Commission and to the Attorney General thirty (30) days immediately following the date of the filing of the notice unless within that period the municipality substantially complies with the requirements of subsection (1). If, after thirty (30) days from the giving of the notice, the municipality, in the opinion of the State Auditor, has not substantially initiated efforts to comply with the requirements of subsection (1), the State Auditor shall issue a certificate of noncompliance to the clerk of the municipality, State Tax Commission and the Attorney General. Thereafter, the State Tax Commission shall withhold from all allocations and payments to the municipality that would otherwise be payable the amount necessary to pay one hundred fifty percent (150%) of the cost of preparing the required audit or report as contracted for by the State Auditor. The cost shall be determined by the State Auditor after receiving proposals for the audit or report required in subsection (1) of this section. The State Auditor shall notify the State Tax Commission of the amount in writing, and the State Tax Commission shall transfer that amount to the State Auditor. The State Auditor is authorized to escalate, budget and expend these funds in accordance with rules and regulations of the Department of Finance and Administration consistent with the escalation of federal funds. All remaining funds shall be retained by the State Auditor to offset the costs of administering these contracts. The State Auditor shall not unreasonably delay the issuance of a written notice of cancellation of a certificate of noncompliance but shall promptly issue a written notice of cancellation of certificate of noncompliance upon an affirmative showing by the municipality that it has come into substantial compliance.

SOURCES: Codes, 1942, § 9121-17; Laws, 1950, ch. 497, § 17; Laws, 1970, ch. 502, § 1; Laws, 1970, ch. 540, § 1; Laws, 1981, ch. 378, § 1; Laws, 1985, ch. 519, § 6; Laws, 1988, ch. 457, § 8; Laws, 1990, ch. 526, § 1; Laws, 2009, ch. 435, § 1, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment, effective for municipal fiscal years commencing on or after October 1, 2009, rewrote (1); and added (2).

§ 21-35-33. Penalty for violation.

ATTORNEY GENERAL OPINIONS

The ultimate responsibility for any violations of the provisions of Section 21-35-1 et seq. rests with either the members of the governing authority authorizing unlawful expenditures in excess of budgeted amounts or with the clerk (or the appropriate individual of the fiscal or finance department established pursuant to Sec-

tion 21-17-15) in issuing warrants in excess of budgeted amounts, or with all such officers or employees. Crisler, Mar. 24, 2006, A.G. Op. 06-0033.

CHAPTER 37

Streets, Parks and Other Public Property

§ 21-37-3. Streets, sidewalks, sewers and parks.

ATTORNEY GENERAL OPINIONS

Municipal governing authorities have the authority perform work on private property to alleviate flooding on a municipal street which creates a danger to the driving public. Stockton, May 13, 2005, A.G. Op. 05-0220.

If streets are determined not to be dedicated city streets and are the property of a community college, then the provisions of Section 37-29-67 authorize the board of trustees to gate the streets for the protection and safety of students, guests, faculty and employees. Smith, Nov. 9, 2005, A.G. Op. 05-0566.

An interlocal agreement between the a city and county is not required for the county to make improvements to a city street. However, the city must consent to or enter an agreement with the county for any proposed work on city streets by the entering of an order on the minutes of both the board of aldermen and the board of supervisors in order for the county to be able to perform any type of work or assistance on a city street or road. Davis, Dec. 27, 2005, A.G. Op. 05-0611.

A county may not impose and collect street assessments associated with improvements to a city street. The city may pay and the county may accept amounts in consideration of work that the county performs. Davis, Dec. 27, 2005, A.G. Op. 05-0611.

Governing authorities may allow gates, cameras, speed bumps or other similar devices on public municipal streets as long as such streets remain fully and equally accessible to all members of the general public. Mills, Apr. 28, 2006, A.G. Op. 06-0053.

Where a county road is constructed in an annexed area after the annexation is finalized but before it is "pre-cleared" by the U. S. Justice Department under Section 5 of the Voting Rights Act, such road, upon preclearance, becomes a city street and the city becomes responsible for its maintenance. Brown, Nov. 10, 2006, A.G. Op. 06-0564.

Community college police have the powers of a constable pursuant to Miss Code Ann. § 37-29-275 and are authorized to enforce state laws within their jurisdiction, but do not have authority to enforce municipal or campus ordinances on municipal streets that run through the campus. Campus police officers may assist in the enforcement of municipal parking ordinances on municipal streets by notifying municipal authorities when violations occur. A determination of the validity of "campus tickets" may only be made by a court of competent jurisdiction. Graham, March 16, 2007, A.G. Op. #07-00138, 2007 Miss. AG LEXIS 102.

§ 21-37-7. Closing streets.

ATTORNEY GENERAL OPINIONS

If a city chooses to dispose of a dedicated street, it must first vacate the street pursuant to Section 21-37-7. Herring, Sept. 11, 2006, A.G. Op. 06-0419.

Under Miss. Code Ann. § 21-17-1, a municipality may always dispose of its municipal property when it has ceased to use the property for a municipal purpose after making the requisite findings. A municipality may accept construction of turn lane improvements on existing right-of-way property by a private owner. Stockton, March 23, 2007, A.G. Op. #07-00144, 2007 Miss. AG LEXIS 121.

§ 21-37-21. Public cemeteries; cemetery board of trustees authorized in certain municipalities.

ATTORNEY GENERAL OPINIONS

As long as the acceptance of the gift of a parcel of land upon which a cemetery is located complies with the provisions of Section 21-37-21, a town may accept the gift. Berry, Sept. 15, 2006, A.G. Op. 06-0430.

A municipality may acquire title to previously-sold individual burial lots by gift, purchase, prescription provided that it can show the elements of adverse possession or eminent domain upon making the requisite findings. Thomas, Nov. 3, 2006, A.G. Op. 06-0534.

§ 21-37-23. Parking facilities for motor vehicles; establishment and operation authorized.

ATTORNEY GENERAL OPINIONS

Section 21-37-23 does not authorize municipal governing authorities to convey property to a private developer to construct a six-story hotel and reconvey the first three floors for a municipal parking facility. McCluer, Jan. 26, 2006, A.G. Op. 05-0590.

The sale or lease of a municipal parking facility pursuant to the provisions of Section 21-37-23 would not be subject to the provisions of Section 21-17-1. McCluer, Jan. 26, 2006, A.G. Op. 05-0590.

Section 21-37-23 provides specific authority for municipal governing authorities to enter into a long-term lease of a municipally owned parking facility that would not be subject to being voided by a successor board. McCluer, Jan. 26, 2006, A.G. Op. 05-0590.

§ 21-37-25. Repealed.

Repealed by Laws, 2010, 2nd Ex Sess., ch. 30, § 7, effective from and after passage (approved Sept. 3, 2010.)

§ 21-37-25. [Codes, 1942, § 3374-169; Laws, 1946, ch. 414; Laws, 1950, ch. 491, § 169; Laws, 1956, ch. 399; Laws, 1958, ch. 515.]

Editor's Note — Former § 21-37-25 provided certain procedures to be followed by municipalities in order to establish, construct and operate a municipal parking facility for motor vehicles of members of the general public.

§ 21-37-29. Parking meters.

ATTORNEY GENERAL OPINIONS

A private contractor hired by a municipality to operate public parking may not issue traffic tickets or citations. A city could authorize the contractor to immobilize or tow illegally parked vehicles if requested by law enforcement. Kohnke, May 27, 2005, A.G. Op. 05-0186.

§ 21-37-55. Conveyance of land in slum, blighted or urban renewal areas to urban renewal agencies by certain municipalities.

(1) A municipality with a population of one hundred thousand (100,000) or more according to the latest federal decennial census, may convey to its urban renewal agency, for a nominal price, land in a slum area, blighted area or urban renewal area to which it holds title.

(2) As used in this section:

(a) "Urban renewal agency" means an urban renewal agency created under Section 43-35-33.

(b) "Slum area," "blighted area" and "urban renewal area" have the meaning ascribed to such terms in Section 43-35-3.

SOURCES: Laws, 2011, ch. 324, § 1, eff from and after July 1, 2011.

CHAPTER 39

Contracts and Claims

§ 21-39-3. Letting of contracts for publication of proceedings, ordinances, etc.

JUDICIAL DECISIONS

1. In general.

City Board of Aldermen (Board) invited and accepted bids from both the publisher and the newspaper as required, and both parties agreed that the newspaper submitted the lower bid; pursuant to the language of Miss. Code Ann. § 21-39-3, the Board was required to award the contract to publish legal notices to the lowest bidder, and thus, the Board acted in accordance with the statute. Stone County Publ., Inc. v. Prout, 18 So. 3d 300 (Miss. Ct. App. 2009).

ATTORNEY GENERAL OPINIONS

Municipal governing authorities may require newspapers submitting bids for the municipality's publishing contract to provide evidence of compliance with Sec-

tion 13-3-31. Taylor, Oct. 27, 2006, A.G. Op. 06-0530.

§ 21-39-5. Records and payment of claims in all municipalities.

ATTORNEY GENERAL OPINIONS

A governing authority may define which expenses are reimbursable travel expenses, consistent with the rules and regulations of the Department of Finance and Administration. Reimbursement of travel expenses may only be made for travel authorized by a governing authority in minutes or by resolution or ordnance, and must be included in the annual budget. A governing authority can authorize a department head to approve travel it has budgeted. Only the administrative head of a municipal department may authorize travel advances. Campbell, March 23, 2007, A.G. Op. #07-00135, 2007 Miss. AG LEXIS 120.

§ 21-39-21. Disposition of lost, stolen, abandoned or misplaced personal property.

Cross References — Removal of personal property adjudicated to be a menace under § 21-19-11 not subject to the provisions of this section, see § 21-19-11.

ATTORNEY GENERAL OPINIONS

County may entertain an ordinance to provide for handling and disposition of lost or abandoned property to the extent such is not addressed elsewhere under the law, and further provided such ordinance comports with due process and otherwise passes constitutional muster. If there is no county ordinance in place that deals with the disposition of lost property, it would probably be safe for the county to follow the notice guidelines established in Section 21-39-21. Stewart, May 20, 2005, A.G. Op. 05-0181.

CHAPTER 43

Business Improvement Districts

BUSINESS IMPROVEMENT DISTRICTS ACT

§ 21-43-113. Notice of meeting for development of district plan; requirements for approval of proposed plan; contents of proposed plan.

In order to establish a business improvement district, and upon establishment, every tenth year thereafter, those property owners which make up the area of the proposed district shall be notified of a meeting by United States mail no less than ten (10) days prior to the scheduled date of the meeting. Notification shall include the specific location, date and time of the meeting. The goal of the meeting shall be to develop a district plan for the upcoming ten-year period. Such plan shall be agreed upon by a majority of those property owners in attendance at the meeting. Such district plan shall include the following:

(a) A description of the boundaries of the district sufficient to identify the lands included;

(b) The improvements proposed and the maximum cost thereof for each of the coming ten (10) years;

(c) The total amount proposed to be expended for improvements for and in the district during the upcoming ten (10) years;

(d) The proposed source or sources of financing and funding for the improvements;

(e) The proposed target dates for beginning the implementation of the improvements;

(f) The naming of the district management group for the upcoming ten (10) years; and

(g) A listing of the individual properties to be included in the district with any assessment computed and identified for each property based upon gross square footage of buildings and unimproved real estate. The plan may provide that tax exempt properties be included in the district but not be subject to any assessment.

SOURCES: Laws, 1995, ch. 442, § 7; Laws, 2012, ch. 373, § 4, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment in the introductory paragraph, substituted "tenth" for "fifth" in the first sentence, "ten-year" for "five-year" in the next-to-last sentence; and substituted "ten (10)" for "five (5)" in (b), (c) and (f).

§ 21-43-117. Notice of hearing for review of proposed district plan; conduct of election upon proposed district plan; notice of election results; review of approved plan by mayor of municipality; disbursement of proceeds from assessment.

(1) For initial creation of the district, reauthorization of the district at the end of each ten-year period, amendment to the district plan within the ten-year plan period or modification of the boundaries of the district at the end of a ten-year period, the clerk of the municipality shall notify all property owners to be included in the proposed district of a public hearing to review the plan

and receive comment about the process for accepting or rejecting the plan. Following a public hearing, the governing authority of the municipality shall set an election date not more than sixty (60) days from the date of the public hearing. The ballot shall clearly state the issue to be decided. Only property owners of record as of the date of initial notice given as provided in Section 21-43-111 shall be eligible to participate in any such election.

(2) Notice of an election to create, continue, amend or extend a district shall be:

(a) Mailed to each of the district property owners of record thirty (30) days prior to the election, and

(b) Published at least twice in a newspaper of general circulation in the municipality, the first publication shall be not less than ten (10), nor more than thirty (30) days before the date for the election. The notice shall include a copy of the plan, a ballot for the election and a notice about the time and date for the election.

(3) Not less than ten (10) nor more than thirty (30) days before the date set for the election, the governing authority of the municipality shall cause a copy of the plan and the ballot to be posted in the lobby of its city hall.

(4) Ballots shall be marked, signed and submitted by the eligible property owner to the clerk of the municipality by the date designated on the ballot.

(5) The clerk of the municipality shall notify the property owners in the district of the result.

(6) If the plan is approved by sixty percent (60%) of the participating eligible property owners, the mayor of the municipality shall review the district plan to ensure its compliance with the provisions of Sections 21-43-101 through 21-43-133.

(7) The municipality shall disburse the proceeds collected from the assessment to the designated district management group within thirty (30) days after the assessment is due.

SOURCES: Laws, 1995, ch. 442, § 9; Laws, 2012, ch. 373, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment subsituted "ten-year period" for "five-year period" three times in (1); in (6), substituted "sixty percent (60%) of the participating eligible property owners" for "seventy percent (70%) of the property owners."

§ 21-43-119. Requirements for approval of district plan; requirements for reauthorization, amendments of district plan or modification of boundaries.

A district plan shall be deemed adopted and ready for implementation upon written ballot approval by sixty percent (60%) of the participating eligible property owners in the district. Reauthorization, amendments of the district plan or modification of boundaries shall also be subject to written ballot approval by sixty percent (60%) of the participating eligible property owners.

SOURCES: Laws, 1995, ch. 442, § 10; Laws, 2012, ch. 373, § 2, eff from and after July 1, 2012.

Joint Legislative Committee Note — The second sentence of the section contained a typographical error. At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, in 2007, the error was corrected by changing the word "or" to "of" so that "Reauthorization, amendments or the district plan" now reads "Reauthorization, amendments of the district plan." The Joint Committee ratified the correction, pursuant to Section 1-1-109, at its August 5, 2008, meeting.

Amendment Notes — The 2012 amendment substituted "sixty percent (60%) of the participating eligible" for "seventy percent (70%) of the" in the first sentence and substituted "sixty percent (60%) of the participating eligible" for "seventy percent (70%) of the eligible" in the second sentence.

§ 21-43-131. Duration of initial authorization of district; requirements and procedure for reauthorization.

The initial authorization for any business improvement district shall be for ten (10) years. During the last twelve (12) months of the tenth year of the authorization, a new district plan must be developed which meets all of the initial requirements of the district plan plus reauthorizes the district for another ten (10) years. Reauthorization requires the same approval process as initial establishment and authorization of the district. Should the district fail to receive reauthorization from the affected property owners in the district, the business improvement district will cease to exist at the conclusion of the most recently approved ten-year period or as soon thereafter as any outstanding indebtedness is satisfied. The ability to reauthorize rests solely with the affected property owners in the district.

SOURCES: Laws, 1995, ch. 442, § 16; Laws, 2012, ch. 373, § 3, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment substituted "ten (10)" for "five (5)," "tenth" for "fifth", and "ten-year" for "five-year" throughout the section.

CHAPTER 45

Tax Increment Financing

§ 21-45-21. Assessment of value of real property described in tax increment financing plan; retention and distribution of captured assessed value; approval of redevelopment plan; certification of amount of sales tax collected.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

TITLE 23

ELECTIONS

CHAPTER 15

Mississippi Election Code

Article 1.

In General.

Sec.

§ 23-15-1. Short title.

Editor's Note — Laws of 2008, ch. 528, § 1, provides:

"SECTION 1. (1) There is created the Comprehensive Election Reform Review Panel to study Mississippi's election laws, the practical application of the laws, and any possible reforms needed to improve application of those laws.

"(2) The panel shall be composed of the following members:

"(a) The Chairperson and Vice Chairperson of the House of Representatives Apportionment and Elections Committee and the Senate Elections Committee;

"(b) One (1) person appointed by the Speaker of the House of Representatives;

"(c) One (1) person appointed by the Lieutenant Governor;

"(d) The Secretary of State, or his designee;

"(e) One (1) circuit clerk appointed by the Mississippi Association of Circuit Clerks;

"(f) One (1) election commissioner appointed by the Election Commissioners Association of Mississippi; and

"(g) One (1) person appointed by the Attorney General.

"(3) The Secretary of State or his designee shall serve as chairman of the panel. The panel shall meet at the call of the chairman and at its first meeting and shall select a

vice chairman from among its membership. The vice chairman shall also serve as secretary of the panel and shall be responsible for keeping all records of the panel. A majority of the members of the panel shall constitute a quorum.

"(4) The panel shall examine voter identification requirements, early voting, voter registration, absentee voting, voting patterns, education, training of election officials and any other election law reforms deemed important by the panel. The panel shall file a report with the Clerk of the House of Representatives, the Secretary of the Senate and the Governor containing its findings and recommendations regarding Mississippi election laws by not later than December 1, 2008.

"(5) Legislative members of the panel shall receive per diem, travel or other expenses, if authorized by the Management Committee of the House of Representatives and Rules Committee of the Senate, from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem or expense for attending meetings of the panel shall be paid while the Legislature is in session.

"(6) Nonlegislative members of the panel shall receive no compensation for their service on the panel but may receive reimbursement for travel expenses incurred while engaged in official business of the panel in accordance with Section 25-3-41.

"(7) The panel shall be dissolved on December 1, 2008."

§ 23-15-3. Definition of "ballot box."

For purposes of this chapter, the term "ballot box" includes any ballot bag or container of a type that has been approved for use in elections by the Secretary of State. Such ballot bags or containers may be used for any purpose for which a ballot box may be used under the provisions of law regulating elections in Mississippi or any other purpose authorized by the rules and regulations adopted by the Secretary of State. The Secretary of State shall approve a ballot bag to be used as provided in this section by December 31, 2007. Any changes to the ballot bag by the Secretary of State after December 31, 2007, shall be approved by the Legislature.

SOURCES: Laws, 2007, ch. 596, § 1, eff July 23, 2007 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's Note — This section is being reprinted in the supplement to reflect the preclearance of the amendment to this section by Laws of 2007, ch. 593.

On July 23, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 596.

§ 23-15-5. Elections Support Fund created; use of funds.

(1) There is created in the State Treasury a special fund to be known as the Elections Support Fund. Monies derived from annual report fees imposed upon limited liability companies under Section 79-29-1203 shall be deposited into the Elections Support Fund. Unexpended amounts remaining in the fund at the end of the fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be disbursed as provided in subsection (2) of this section. The expenditure of monies in the fund shall be under the direction of the Secretary of State as

provided by subsection (2) of this section, and such funds shall be paid by the State Treasurer upon warrants issued by the Department of Finance and Administration.

(2)(a) Monies in the fund shall be used as follows:

(i) Fifty percent (50%) of the monies in the special fund shall be distributed annually to the counties, based on the proportion that the population of a county bears to the total population in all counties of the state population according to the most recent information from the United States Census Bureau, for the purpose of acquiring, upgrading, maintaining or repairing voting equipment, systems and supplies, hiring temporary technical support, conducting elections using such voting equipment or systems and training election officials; and

(ii) The remaining fifty percent (50%) of the monies in the special fund shall be allocated annually to the Secretary of State and expended for the purpose of maintaining, upgrading or equipping the Statewide Elections Management System.

(b) The Secretary of State shall create standard training guidelines to assist counties in training election officials with the funds authorized under subsection (2)(a)(ii) of this section. Any criteria established by the Secretary of State for the purposes of this section shall be used in addition to any other training or coursework prescribed by the Secretary of State to train circuit clerks, poll managers and any other election officials participating in county elections.

(c) Notwithstanding any other provision of law, no monies from the Elections Support Fund shall be used by the Secretary of State or any person associated with the Office of the Secretary of State to provide or otherwise support expert testimony in any manner for any hearing, trial or election contest.

SOURCES: Laws, 2010, ch. 532, § 2, eff from and after Jan. 1, 2011.

§ 23-15-7. Mississippi Voter Identification Card.

(1) The Secretary of State shall negotiate a Memorandum of Understanding which shall be entered into by the Mississippi Department of Public Safety and the registrar of each county for the purpose of providing a Mississippi Voter Identification Card. Such card shall be valid for the purpose of voter identification purposes under Section 23-15-563 and available only to registered voters of this state. No fee shall be charged or collected for the application for or issuance of a Mississippi Voter Identification Card. Any costs associated with the application for or issuance of a Mississippi Voter Identification Card shall be made payable from the state's General Fund.

(2) The registrar of each county shall provide a location in the registrar's office at which he or she shall accept applications for Mississippi Voter Identification Cards in accordance with the Mississippi Constitution; however, in counties having two (2) judicial districts the registrar shall provide a location in the registrar's office in each judicial district at which he or she shall

accept applications for Mississippi Voter Identification Cards in accordance with the Mississippi Constitution.

(3) No person shall be eligible for a Mississippi Voter Identification Card if the person has a valid unexpired Mississippi driver's license or an identification card issued under Section 45-35-1 et seq.

(4)(a) The Mississippi Voter Identification Card shall be captioned "MISSISSIPPI VOTER IDENTIFICATION CARD" and shall contain a prominent statement that under Mississippi law it is valid only as identification for voting purposes. The identification card shall include the following information regarding the applicant:

(i) Full legal name;

(ii) Legal residence address;

(iii) The Mailing address, if different; and

(iv) Voting information.

(b) The Mississippi Voter Identification Card shall also contain the date the voter identification card was issued, the county in which the voter is registered and such other information as required by the Secretary of State.

(5) The application shall be signed and sworn to by the applicant and any falsification or fraud in the making of the application shall constitute false swearing under Section 97-7-35.

(6) The registrar shall require presentation and verification of any of the following information during the application process before issuance of a Mississippi Voter Identification Card:

(a) A photo identity document; or

(b) Documentation showing the person's date and place of birth; or

(c) A social security card; or

(d) A Medicare card; or

(e) A Medicaid card; or

(f) Such other acceptable evidence of verification of residence in the county as determined by the Secretary of State.

(7) A Mississippi Voter Identification Card shall remain valid for as long as the cardholder resides at the same address and remains qualified to vote. It shall be the duty of a person who moves his or her residence within this state to surrender his or her voter identification card to the registrar of the county of his or her new residence and such person may thereafter apply for and receive a new card if such person is eligible under this section. It shall be the duty of a person who moves his or her residence outside this state or who ceases to be qualified to vote to surrender his or her card to the registrar who issued it.

(8) The Secretary of State, in conjunction with the Mississippi Department of Public Safety, shall adopt rules and regulations for the administration of this section.

SOURCES: Laws, 2012, ch. 526, § 2, eff August 5, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965).

Editor's Note — The effective date of the bill that amended this section, Chapter 526, Laws of 2012 (House Bill No. 921), is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was submitted to the United States Attorney General under Section 5, the United States Supreme Court, in the case of Shelby County v. Holder (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the Shelby County decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. Chapter 526 was submitted to the United States Attorney General before the Shelby County decision was rendered. In a letter dated August 5, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 526 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 526, so Chapter 526 became effective on the date of the response letter from the United States Attorney General, August 5, 2013.

ARTICLE 3.

VOTER REGISTRATION.

SUBARTICLE A.

QUALIFICATION OF ELECTORS.

SEC.

§ 23-15-11. Qualifications, generally.

Every inhabitant of this state, except persons adjudicated to be non compos mentis, who is a citizen of the United States of America, eighteen (18) years old and upwards, who has resided in this state for thirty (30) days and for thirty (30) days in the county in which he seeks to vote, and for thirty (30) days in the incorporated municipality in which he seeks to vote, and who has been duly registered as an elector under Section 23-15-33, and who has never been convicted of vote fraud or of any crime listed in Section 241, Mississippi Constitution of 1890, shall be a qualified elector in and for the county, municipality and voting precinct of his residence, and shall be entitled to vote at any election upon compliance with Section 23-15-563. Any person who will be eighteen (18) years of age or older on or before the date of the general election and who is duly registered to vote not less than thirty (30) days before the primary election associated with the general election, may vote in the

primary election even though the person has not reached his or her eighteenth birthday at the time that the person seeks to vote at the primary election. No others than those specified in this section shall be entitled, or shall be allowed, to vote at any election.

SOURCES: Derived from 1972 Code § 21-11-1 [Codes, 1892, § 3028; 1906, § 3433; Hemingway's 1917, § 5993; 1930, § 2595; 1942, § 3374-60; Laws, 1950, ch. 491, § 60; Laws, 1984, ch. 457, § 2; repealed by Laws, 1986, ch. 495, § 329], § 23-3-11 [Codes, 1942, § 3160; Laws, 1935, ch. 19; Laws, 1936, ch. 320; Laws, 1955 Ex ch. 100, § 2; repealed by Laws, 1986, ch. 495, § 333], and § 23-3-85 [Codes, 1892, § 3631; 1906, § 4138; Hemingway's 1917, § 6772; 1930, § 6207; 1942, § 3235; Laws, 1952, ch. 398, § 2; Laws, 1955, Ex Sess, ch. 101; Laws, 1962, ch. 575; Laws, 1965 Ex Sess, ch. 18, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 2; Laws, 1997, ch. 315, § 1; Laws, 2000, ch. 430, § 2; Laws, 2008, ch. 442, § 10; Laws, 2012, ch. 517, § 1; Laws, 2012, ch. 526, § 4, August 5, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965.)

Joint Legislative Committee Note — This section was amended by Section 1 of Chapter 517, Laws of 2012, approved May 2, 2012, and effective from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended (November 26, 2012). The section was also amended by Section 4 of Chapter 526, Laws of 2012, approved May 17, 2012, and effective from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended (August 5, 2013). Section 1-1-109 gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments, contingent upon preclearance, as consistent with the legislative intent at the August 16, 2012, meeting of the Committee.

Editor's Note — The effective date of the bill that amended this section, Chapter 526, Laws of 2012 (House Bill No. 921), is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was submitted to the United States Attorney General under Section 5, the United States Supreme Court, in the case of Shelby County v. Holder (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the Shelby County decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. Chapter 526 was submitted to the United States Attorney General before the Shelby County decision was rendered. In a letter dated August 5, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 526 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 526, so Chapter 526 became effective on the date of the response letter from the United States Attorney General, August 5, 2013.

By letter dated November 26, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 517.

Amendment Notes — The 2008 amendment, in the first sentence, substituted "except persons adjudicated to be non compos mentis" for "except idiots and insane persons" and "incorporated municipality" for "incorporated city or town"; in the last sentence, substituted "those specified in this section" for "those above included"; substituted "seeks to vote" for "offers to vote" throughout; and made minor stylistic changes.

The first 2012 amendment (ch. 517), inserted "of vote fraud or" following "never been convicted" near the end of the first sentence.

The second 2012 amendment (ch. 526), added "upon compliance with Section 23-15-563" at the end of the first sentence.

ATTORNEY GENERAL OPINIONS

If a candidate establishes his residence within the corporate limits of a municipality at least 30 days prior to the election and registers to vote and meets all other qualifications to be mayor, he could qualify to run for that office. Turnage, Aug. 23, 2006, A.G. Op. 06-0400.

A candidate could establish his residence within the corporate limits 30 days before the election and then file his qualifying papers at least 20 days prior to the municipal special election and be eligible to have his name placed on the ballot. Turnage, Aug. 23, 2006, A.G. Op. 06-0400.

§ 23-15-19. Persons convicted of certain crimes not to be registered.

Any person who has been convicted of vote fraud or of any crime listed in Section 241, Mississippi Constitution of 1890, shall not be registered, or if registered the name of the person shall be erased from the registration book on which it may be found by the registrar or by the election commissioners. Whenever any person shall be convicted in the circuit court of his county of any of those crimes, the registrar shall thereupon erase his name from the registration book; and whenever any person shall be convicted of any of those crimes in any other court of any county, the presiding judge of the court shall, on demand, certify the fact in writing to the registrar, who shall thereupon erase the name of the person from the registration book and file the certificate as a record of his office.

SOURCES: Derived from 1972 Code § 23-5-35 [Codes 1871, § 343; 1880, § 108; 1892, § 3614; 1906, § 4120; Hemingway's 1917, § 6754; 1930, § 6186; 1942, § 3214; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 6; Laws, 2012, ch. 517, § 2, November 26, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated November 26, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 517.

Amendment Notes — The 2012 amendment inserted "vote fraud or of" in the first sentence and made minor stylistic changes throughout.

SUBARTICLE B.

PROCEDURES FOR REGISTRATION.

SEC.

§ 23-15-33. Registrar to register voters.

(1) Every person entitled to be registered as an elector in compliance with the laws of this state and who has signed his name on and properly completed the application for registration to vote shall be registered by the registrar in the voting precinct of the residence of such person through the Statewide Elections Management System.

(2) Every person entitled to be registered as an elector in compliance with the laws of this state and who registers to vote pursuant to the National Voter Registration Act of 1993 shall be registered by the registrar in the voting precinct of the residence of such person through the Statewide Elections Management System.

(3) Every person entitled to vote by absentee shall have all absentee applications processed by the registrar through the Statewide Election Management System. The registrar shall account for all absentee ballots delivered to such voters and received from such voters through the Statewide Election Management System.

SOURCES: Derived from 1972 Code § 23-5-31 [Codes, 1880, § 106; 1892, § 3611; 1906, § 4117; Hemingway's 1917, § 6751; 1930, § 6184; 1942, § 3212; Laws, 1955, Ex ch. 99; Laws, 1962, ch. 569, § 2; Laws, 1965 Ex Sess, ch. 13, § 1; Laws, 1978, ch. 393, § 2; Laws, 1984, Ch. 460, § 2; repealed by Laws, 1986, ch. 495, § 335]; en. Laws, 1986, ch. 495, § 9; Laws, 1991, ch. 440, § 7; Laws, 2000, ch. 430, § 1; Laws, 2006, ch. 574, § 1; Laws, 2012, ch. 471, § 1, September 6, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated September 6, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 471.

Amendment Notes — The 2012 amendment added (3).

§ 23-15-35. Clerk of municipality to be registrar; registration books; form of application for registration; registration of county electors by clerk.

[For municipalities that do not provide the information as required by Section 1 of Chapter 532, Laws of 2008, until January 1, 2010, this section shall read as follows:]

(1) The clerk of the municipality shall be the registrar of voters of the municipality, and shall take the oath of office prescribed by Section 268 of the Constitution. The governing authorities shall provide suitable municipal registration books, which shall conform as nearly as practicable to the county registration books. The registrar shall, as nearly as may be practicable, and where not otherwise provided, comply with all the provisions of law regarding state and county elections in keeping and maintaining such registration books and in registering voters thereon. Applications for registration as electors of the municipality shall be made upon a triplicate form provided by and prepared at the expense of the county registrar, which form shall conform as nearly as practicable to the application for registration form provided for in Section 23-15-39.

(2) The municipal clerk shall be authorized to register applicants as county electors. The municipal clerk shall forward notice of registration, a copy of the application for registration, and any changes to the registration when they occur, either by certified mail to the county registrar or by personal delivery to the county registrar provided that a numbered receipt is signed by the registrar in return for the described documents. Upon receipt of the copy of the application for registration or changes to the registration, and if a review of the application indicates that the applicant meets all the criteria necessary to qualify as a county elector, then the county registrar shall make a determination of the county voting precinct in which the person making the application shall be required to vote. The county registrar shall send this county voting precinct information by United States first-class mail, postage prepaid, to the person at the address provided on the application. Any and all mailing costs incurred by the municipal clerk or the county registrar in effectuating this subsection shall be paid by the county board of supervisors. If a review of the copy of the application for registration or changes to the registration indicates that the applicant is not qualified to vote in the county, the county registrar shall challenge the application. The county election commissioners shall review any challenge or disqualification, after having notified the applicant by certified mail of the challenge or disqualification.

(3) The municipal clerk shall issue to the person making the application a copy of the application, and the county registrar shall process the application in accordance with the law regarding the handling of voter registration applications.

(4) The receipt of a copy of the application for registration sent pursuant to Section 23-15-39(3) shall be sufficient to allow the applicant to

be registered as an elector in the municipality, provided that such application is not challenged as provided for therein.

[From and after June 1, 2008, for municipalities that provide the information as required by Section 1 of Chapter 532, Laws of 2008, and for all other municipalities from and after January 1, 2010, this section shall read as follows:]

(1) The clerk of the municipality shall be the registrar of voters of the municipality, and shall take the oath of office prescribed by Section 268 of the Constitution. The municipal registration shall conform to the county registration which shall be a part of the official record of registered voters as contained in the Statewide Elections Management System. The municipal clerk shall comply with all the provisions of law regarding the registration of voters, including the use of the voter registration applications used by county registrars and prescribed by the Secretary of State under Sections 23-15-39 and 23-15-47.

(2) The municipal clerk shall be authorized to register applicants as county electors. The municipal clerk shall forward notice of registration, a copy of the application for registration, and any changes to the registration when they occur, either by certified mail to the county registrar or by personal delivery to the county registrar provided that a numbered receipt is signed by the registrar in return for the described documents. Upon receipt of the copy of the application for registration or changes to the registration, and if a review of the application indicates that the applicant meets all the criteria necessary to qualify as a county elector, then the county registrar shall make a determination of the county voting precinct in which the person making the application shall be required to vote. The county registrar shall send this county voting precinct information by United States first-class mail, postage prepaid, to the person at the address provided on the application. Any and all mailing costs incurred by the municipal clerk or the county registrar in effectuating this subsection shall be paid by the county board of supervisors. If a review of the copy of the application for registration or changes to the registration indicates that the applicant is not qualified to vote in the county, the county registrar shall challenge the application. The county election commissioners shall review any challenge or disqualification, after having notified the applicant by certified mail of the challenge or disqualification.

(3) The municipal clerk shall issue to the person making the application a copy of the application and the county registrar shall process the application in accordance with the law regarding the handling of voter registration applications.

(4) The receipt of a copy of the application for registration sent pursuant to Section 23-15-39(3) shall be sufficient to allow the applicant to be registered as an elector in the municipality, provided that such application is not challenged as provided for therein.

(5) The municipal clerk of each municipality shall provide the circuit clerk of the county in which the municipality is located the information

necessary to conform the municipal registration to the county registration which shall be a part of the official record of registered voters as contained in the Statewide Elections Management System. If any changes to the information occur as a result of redistricting, annexation or other reason, it shall be the responsibility of the municipal clerk to timely provide the changes to the circuit clerk.

SOURCES: Derived from 1972 Code § 21-11-3 [Codes, 1892, § 3029; 1906, § 3434; Hemingway's 1917, § 5994; 1930, § 2596; 1942, § 3374-61; Laws, 1904, ch. 158; Laws, 1950, ch. 491, § 61; Laws, 1984, ch 457, § 3; repealed by Laws, 1986, ch. 495, § 329]; en, Laws, 1986, ch. 495, § 10; Laws, 1988, ch. 350, § 5; Laws, 2004, ch. 305, § 8; Laws, 2006, ch. 574, § 2; Laws, 2007, ch. 565, § 1; Laws, 2008, ch. 532, § 2; brought forward without change, Laws, 2012, ch. 471, § 6, eff September 6, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section.)

Editor's Note — Laws of 2008, ch. 532, § 1, provides:

"SECTION 1. No municipality shall participate in the Statewide Elections Management System before January 1, 2010, unless the municipal clerk of the municipality provides the circuit clerk of the county in which the municipality is located, by not later than June 1, 2008, the information necessary to conform the municipal registration to the county registration which shall be a part of the official record of registered voters as contained in the Statewide Elections Management System. This section shall be repealed from and after January 1, 2010."

On August 4, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 532.

This section was brought forward without change by Laws of 2012, ch. 471, effective from and after the date Laws of 2012, ch. 471, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

By letter dated September 6, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 471.

Amendment Notes — The 2008 amendment, in the first version, substituted the present bracketed effective date language for the former bracketed information, which read: "Until January 1, 2009, this section shall read as follows"; and in the second version, substituted the present bracketed effective date information for the former bracketed information, which read: "From and after January 1, 2009, this section shall read as follows," and added (5).

The 2012 amendment brought the section forward without change.

§ 23-15-37. Keeping registration books; registration of voters; voter registration in public schools.

(1) The registrar shall keep his books open at his office and shall register the electors of his county at any time during regular office hours.

(2) The registrar may keep his office open for registration of voters from 8:00 a.m. until 7:00 p.m., including the noon hour, for the five (5) business days immediately preceding the thirtieth day prior to any regularly scheduled primary or general election. The registrar shall also keep his office open from

8:00 a.m. until 12:00 noon on the Saturday immediately preceding the thirtieth day prior to any regularly scheduled primary or general election.

(3) The registrar, or any deputy registrar duly appointed by law, may visit and spend such time as he may deem necessary at any location in his county, selected by the registrar not less than thirty (30) days before an election, for the purpose of registering voters.

(4) A person who is physically disabled and unable to visit the office of the registrar to register to vote due to such disability may contact the registrar and request that the registrar or his deputy visit him for the purpose of registering such person to vote. The registrar or his deputy shall visit such person as soon as possible after such request and provide such person with an application for registration, if necessary. The completed application for registration shall be executed in the presence of the registrar or his deputy.

(5)(a) In the fall and spring of each year the registrar of each county shall furnish all public schools with mail-in voter registration applications. Such applications shall be provided in a reasonable time to enable those students who will be eighteen (18) years of age before a general election to be able to vote in the primary and general elections.

(b) Each public school district shall permit access to all public schools of this state for the registrar or his deputy for the purpose of registration of persons eligible to vote and for providing voter education.

SOURCES: Derived from 1972 Code § 23-5-29 [Codes, 1892, § 3615; 1906, § 4122; Hemingway's 1917, § 6756; 1930, § 6183; 1942, § 3211; Laws, 1894, ch. 51; Laws, 1942, ch. 217; Laws, 1952, ch. 399; Laws, 1955, Ex ch. 103; Laws, 1966, ch. 611, § 1; Laws, 1984, ch. 457, § 5; repealed by Laws, 1986, ch. 495, § 335]; en Laws, 1986, ch. 495, § 11; Laws, 1988, ch. 350, § 2; Laws, 1991, ch. 440, § 5; Laws, 1997, ch. 314, § 1; Laws, 2001, ch. 394, § 1; Laws, 2009, ch. 506, § 1, eff July 28, 2009 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 28, 2009, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2009, ch. 506, § 1.

Amendment Notes — The 2009 amendment substituted "The registrar shall also keep" for "The registrar may also keep" at the beginning of the second sentence of (2).

SUBARTICLE E.

REGISTRATION RECORDS.

SEC.

§ 23-15-125. Form of pollbooks.

The pollbook of each voting precinct shall designate the voting precinct for which it is to be used, and shall be ruled in appropriate columns, with printed

or written headings, as follows: date of registration; voter registration number; name of electors; date of birth; and a number of blank columns for the dates of elections. Except as otherwise provided in Section 23-15-692, all who register within thirty (30) days before any regular election shall be entered on the pollbooks immediately after such election, and not before, so that the pollbooks will show only the names of those qualified to vote at such election. When election commissioners determine that any elector is disqualified from voting, by reason of removal from the supervisors district, or other cause, that fact shall be noted on the registration book and his name shall be erased from the pollbook. Nothing in this section shall preclude the use of electronic pollbooks.

SOURCES: Derived from 1972 Code § 23-5-73 [Codes, 1892, § 3608; 1906, § 4114; Hemingway's 1917, § 6748; 1930, § 6204; 1942, § 3232; Laws, 1962, ch. 574; Laws, 1977, 2d Ex Sess, ch. 24, § 3; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 36; Laws, 2006, ch. 574, § 9; Laws, 2010, ch. 446, § 8, July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446, § 8.

Amendment Notes — The 2010 amendment added "Except as otherwise provided in Section 23-15-692" at the beginning of the second sentence.

§ 23-15-135. Registrar to keep registration book and pollbooks and provide location for accepting applications for Mississippi Voter Identification Cards.

(1) The registration books of the several voting precincts of each county and the pollbooks heretofore in use shall be delivered to the registrar of the county, and they, together with the registration books and pollbooks hereafter made, shall be records of his office, and he shall carefully preserve the same as such; and after each election the pollbooks shall be speedily returned to the office of the registrar.

(2) The registrar of each county shall provide a location in the registrar's office at which he or she shall accept applications for Mississippi Voter Identification Cards in accordance with the Mississippi Constitution.

(3) The registrar of each county shall enter into a Memorandum of Understanding, which is negotiated by the Secretary of State, with the Mississippi Department of Public Safety for the purpose of providing a Mississippi Voter Identification Card.

SOURCES: Derived from 1972 Code § 23-5-77 [Codes, 1892, § 3610; 1906, § 4116; Hemingway's 1917, § 6750; 1930, § 6206; 1942, § 3234; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 41; Laws, 2012, ch. 526, § 3, eff August 5, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965.)

Editor's Note — The effective date of the bill that amended this section, Chapter 526, Laws of 2012 (House Bill No. 921), is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was submitted to the United States Attorney General under Section 5, the United States Supreme Court, in the case of Shelby County v. Holder (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the Shelby County decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. Chapter 526 was submitted to the United States Attorney General before the Shelby County decision was rendered. In a letter dated August 5, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 526 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 526, so Chapter 526 became effective on the date of the response letter from the United States Attorney General, August 5, 2013.

Amendment Notes — The 2012 amendment added (2) and (3).

ATTORNEY GENERAL OPINIONS

Each county registrar must use sound discretion in determining whether the chairman of the election commission should be the only one other than the registrar to have a key to the room where voter registration records are stored. Reasonable hours of access to the room would be established by the circuit clerk, in his or her discretion. Griffith, Aug. 8, 2005, A.G. Op. 05-0378.

SUBARTICLE F.

PURGING.

SEC.

§ 23-15-151. Roll of persons convicted of certain crimes to be kept by circuit clerk; comparison with registration book.

The circuit clerk of each county is authorized and directed to prepare and keep in his office a full and complete list, in alphabetical order, of persons convicted of vote fraud or of any crime listed in Section 241, Mississippi Constitution of 1890. The clerk shall enter the names of all persons who have been or shall be hereafter convicted of vote fraud or of any crime listed in Section 241, Mississippi Constitution of 1890, in a book prepared and kept for that purpose. The board of supervisors of each county shall, as early as practicable, furnish the circuit clerk of their county with a suitable book for the

enrollment of those names showing the name, date of birth, address, court, crime and date of conviction. The roll, when so prepared, shall be compared with the registration book before each election commissioner of the county. A certified copy of any enrollment by one clerk to another will be sufficient authority for the enrollment of the name, or names, in another county.

SOURCES: Derived from 1972 Code § 23-5-37 [Codes, 1906, §§ 879, 4121; Hemingway's 1917, §§ 4037, 6755; 1930, §§ 4079, 6187; 1942, §§ 3215, 7920; Laws, 1898, ch. 62; Laws, 1908, ch. 109; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 42; Laws, 1987, ch. 499, § 1; Laws, 2012, ch. 517, § 3, eff November 26, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated November 26, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 517.

Amendment Notes — The 2012 amendment inserted "vote fraud or of" following "convicted" in the first and second sentences and made minor stylistic changes throughout.

§ 23-15-153. Revision of registration books and pollbooks by commissioners; amount and limitations of per diem payments to commissioners; provision of copies of registration books to municipal registrars; certification of hours worked; number of days in calendar year for which commissioners entitled to receive compensation.

(1) At the following times, the commissioners of election shall meet at the office of the registrar and carefully revise the registration books and the pollbooks of the several voting precincts, and shall erase from those books the names of all persons erroneously on the books, or who have died, removed or become disqualified as electors from any cause; and shall register the names of all persons who have duly applied to be registered and have been illegally denied registration:

(a) On the Tuesday after the second Monday in January 1987 and every following year;

(b) On the first Tuesday in the month immediately preceding the first primary election for congressmen in the years when congressmen are elected;

(c) On the first Monday in the month immediately preceding the first primary election for state, state district legislative, county and county district offices in the years in which those offices are elected; and

(d) On the second Monday of September preceding the general election or regular special election day in years in which a general election is not conducted.

Except for the names of those persons who are duly qualified to vote in the election, no name shall be permitted to remain on the registration books and pollbooks; however, no name shall be erased from the registration books

or pollbooks based on a change in the residence of an elector except in accordance with procedures provided for by the National Voter Registration Act of 1993 that are in effect at the time of such erasure. Except as otherwise provided by Section 23-15-573, no person shall vote at any election whose name is not on the pollbook.

(2) Except as provided in this section, and subject to the following annual limitations, the commissioners of election shall be entitled to receive a per diem in the amount of Eighty-four Dollars ($84.00), to be paid from the county general fund, for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties in the conduct of an election or actually employed in the performance of their duties for the necessary time spent in the revision of the registration books and pollbooks as required in subsection (1) of this section:

(a) In counties having less than fifteen thousand (15,000) residents according to the latest federal decennial census, not more than fifty (50) days per year, with no more than fifteen (15) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(b) In counties having fifteen thousand (15,000) residents according to the latest federal decennial census but less than thirty thousand (30,000) residents according to the latest federal decennial census, not more than seventy-five (75) days per year, with no more than twenty-five (25) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(c) In counties having thirty thousand (30,000) residents according to the latest federal decennial census but less than seventy thousand (70,000) residents according to the latest federal decennial census, not more than one hundred (100) days per year, with no more than thirty-five (35) additional days allowed for the conduct of each election in excess of one (l) occurring in any calendar year;

(d) In counties having seventy thousand (70,000) residents according to the latest federal decennial census but less than ninety thousand (90,000) residents according to the latest federal decennial census, not more than one hundred twenty-five (125) days per year, with no more than forty-five (45) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(e) In counties having ninety thousand (90,000) residents according to the latest federal decennial census but less than one hundred seventy thousand (170,000) residents according to the latest federal decennial census, not more than one hundred fifty (150) days per year, with no more than fifty-five (55) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(f) In counties having one hundred seventy thousand (170,000) residents according to the latest federal decennial census but less than two hundred thousand (200,000) residents according to the latest federal decennial census, not more than one hundred seventy-five (175) days per year, with no more than sixty-five (65) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(g) In counties having two hundred thousand (200,000) residents according to the latest federal decennial census but less than two hundred twenty-five thousand (225,000) residents according to the latest federal decennial census, not more than one hundred ninety (190) days per year, with no more than seventy-five (75) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(h) In counties having two hundred twenty-five thousand (225,000) residents according to the latest federal decennial census but less than two hundred fifty thousand (250,000) residents according to the latest federal decennial census, not more than two hundred fifteen (215) days per year, with no more than eighty-five (85) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(i) In counties having two hundred fifty thousand (250,000) residents according to the latest federal decennial census but less than two hundred seventy-five thousand (275,000) residents according to the latest federal decennial census, not more than two hundred thirty (230) days per year, with no more than ninety-five (95) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(j) In counties having two hundred seventy-five thousand (275,000) residents according to the latest federal decennial census or more, not more than two hundred forty (240) days per year, with no more than one hundred five (105) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year.

(3) In addition to the number of days authorized in subsection (2) of this section, the board of supervisors of a county may authorize, in its discretion, the commissioners of election to receive a per diem in the amount provided for in subsection (2) of this section, to be paid from the county general fund, for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties in the conduct of an election or actually employed in the performance of their duties for the necessary time spent in the revision of the registration books and pollbooks as required in subsection (1) of this section, for not to exceed five (5) days.

(4)(a) The commissioners of election shall be entitled to receive a per diem in the amount of Eighty-four Dollars ($84.00), to be paid from the county general fund, not to exceed ten (10) days for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties for the necessary time spent in the revision of the registration books and pollbooks prior to any special election. For purposes of this paragraph, the regular special election day shall not be considered a special election. The annual limitations set forth in subsection (2) of this section shall not apply to this paragraph.

(b) The commissioners of election shall be entitled to receive a per diem in the amount of One Hundred Fifty Dollars ($150.00), to be paid from the county general fund, for the performance of their duties on the day of any general or special election. The annual limitations set forth in subsection (2) of this section shall apply to this paragraph.

(5) The commissioners of election shall be entitled to receive a per diem in the amount of Eighty-four Dollars ($84.00), to be paid from the county general fund, not to exceed fourteen (14) days for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties for the necessary time spent in the revision of the registration books, pollbooks and in the conduct of a runoff election following either a general or special election.

(6) The commissioners of election shall be entitled to receive only one (1) per diem payment for those days when the commissioners of election discharge more than one (1) duty or responsibility on the same day.

(7) The county registrar shall prepare the pollbooks and the county commissioners of election shall prepare the registration books of each municipality located within the county pursuant to an agreement between the county and each municipality in the county. The county commissioners of election and the county registrar shall be paid by each municipality for the actual cost of preparing registration books and pollbooks for the municipality and shall pay each county commissioner of election a per diem in the amount provided for in subsection (2) of this section for each day or period of not less than five (5) hours accumulated over two (2) or more days the commissioners are actually employed in preparing the registration books for the municipality, not to exceed five (5) days. The county commissioners of election and county registrar shall provide copies of the registration books and pollbooks to the municipal clerk of each municipality in the county. The municipality shall pay the county registrar for preparing and printing the pollbooks. A municipality may secure "read only" access to the Statewide Centralized Voter System and print its own pollbooks using this information; however, county commissioners of election shall remain responsible for preparing registration books for municipalities and shall be paid for this duty in accordance with this subsection.

(8) County commissioners of election who perform the duties of an executive committee with regard to the conduct of a primary election under a written agreement authorized by law to be entered into with an executive committee shall receive per diem as provided for in subsection (2) of this section. The days that county commissioners of election are employed in the conduct of a primary election shall be treated the same as days county commissioners of election are employed in the conduct of other elections.

(9) Every commissioner of election shall sign personally a certification setting forth the number of hours actually worked in the performance of the commissioner's official duties and for which the commissioner seeks compensation. The certification must be on a form as prescribed in this subsection. The commissioner's signature is, as a matter of law, made under the commissioner's oath of office and under penalties of perjury.

The certification form shall be as follows:

COUNTY ELECTION COMMISSIONER

PER DIEM CLAIM FORM

NAME: COUNTY:
ADDRESS: DISTRICT:
CITY: ZIP:

DATE WORKED	BEGINNING TIME	ENDING TIME	PURPOSE OF WORK	APPLICABLE MS CODE SECTION	ACTUAL HOURS WORKED	PER DIEM DAYS EARNED

TOTAL NUMBER OF PER DIEM DAYS EARNED
EXCLUDING ELECTION DAYS _____
PER DIEM RATE PER DAY EARNED x 84.00
TOTAL NUMBER PER DIEM DAYS EARNED
FOR ELECTION DAYS _____
PER DIEM RATE PER DAY EARNED x 150.00
TOTAL AMOUNT OF PER DIEM CLAIMED $ _____

I understand that I am signing this document under my oath as a commissioner of election and under penalties of perjury.

I understand that I am requesting payment from taxpayer funds and that I have an obligation to be specific and truthful as to the amount of hours worked and the compensation I am requesting.

Signed this the _____ day of _____, _____.

_____
Commissioner's Signature

When properly completed and signed, the certification must be filed with the clerk of the county board of supervisors before any payment may be made. The certification will be a public record available for inspection and reproduction immediately upon the oral or written request of any person.

Any person may contest the accuracy of the certification in any respect by notifying the chairman of the commission, any member of the board of supervisors or the clerk of the board of supervisors of such contest at any time before or after payment is made. If the contest is made before payment is made, no payment shall be made as to the contested certificate until the contest is finally disposed of. The person filing the contest shall be entitled to a full hearing, and the clerk of the board of supervisors shall issue subpoenas upon request of the contestor compelling the attendance of witnesses and production of documents and things. The contestor shall have the right to appeal de novo to the circuit court of the involved county, which appeal must be perfected within thirty (30) days from a final decision of the commission, the clerk of the board of supervisors or the board of supervisors, as the case may be.

Any contestor who successfully contests any certification will be awarded all expenses incident to his contest, together with reasonable attorney's fees, which will be awarded upon petition to the chancery court of the involved county upon final disposition of the contest before the election commission, board of supervisors, clerk of the board of supervisors, or, in case of an appeal, final disposition by the court. The commissioner against whom the contest is decided shall be liable for the payment of the expenses and attorney's fees, and the county shall be jointly and severally liable for same.

(10) Any commissioner of election who has not received a certificate issued by the Secretary of State pursuant to Section 23-15-211 indicating that the commissioner of election has received the required elections seminar instruction and that the commissioner of election is fully qualified to conduct an election, shall not receive any compensation authorized by this section, Section 23-15-491 or Section 23-15-239.

SOURCES: Derived from 1972 Code § 23-5-79 [Codes, 1880, § 124; 1892, § 3635; 1906, § 4142; Hemingway's 1917, § 6776; 1930, § 6211; 1942, § 3239; Laws, 1968, ch. 570, § 1; Laws, 1970, ch. 506, § 24; Laws, 1979, ch. 487, § 1; Laws, 1983, ch. 423, §§ 1, 4; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 43; Laws, 1987, ch. 499, § 15; Laws, 1988, ch. 389, § 1; Laws, 1993, ch. 510, § 1; Laws, 1994, ch. 590, § 2; Laws, 2000, ch. 430, § 4; Laws, 2001, ch. 414, § 1; Laws, 2002, ch. 444, § 1; Laws, 2004, ch. 305, § 12; Laws, 2006, ch. 592, § 2; Laws, 2007, ch. 434, § 4; Laws, 2010, ch. 377, § 1; Laws, 2013, ch. 413, § 1; Laws, 2013, ch. 456, § 1, eff July 18, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965.)

Joint Legislative Committee Note — This section was amended by Section 1 of Chapter 413, Laws of 2013, approved March 20, 2013, and effective from and after July 9, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965, as amended and extended). This section was also amended by Section 1 of Chapter 456, Laws of 2013, approved March 25, 2013, and effective from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended. Section 1-1-109 gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments, contingent upon preclearance, as consistent with the legislative intent at the August 1, 2013, meeting of the Committee.

Editor's Note — This section was amended by two bills in 2013. The effective date of each of the two bills that amended this section, Chapter 413, Laws of 2013 (Senate Bill No. 2238) and Chapter 456, Laws of 2013 (Senate Bill No. 2311), is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bills were approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. Chapter

413 was submitted to the United States Attorney General before the *Shelby County* decision was rendered. In a letter dated July 9, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 413 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 413, so Chapter 413 became effective on the date of the response letter from the United States Attorney General, July 9, 2013.

Chapter 456 was not submitted before the Shelby County decision, but the Mississippi Attorney General's Office submitted Chapter 456 to the United States Attorney General in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated July 18, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 456 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 456, so Chapter 456 became effective from and after July 18, 2013, the date of the United States Attorney General's response letter. The Joint Committee on Compilation, Revision and Publication of Legislation, in its meeting on August 1, 2013, voted to integrate the amendments to this section by Chapter 413 and Chapter 456.

By letter dated June 21, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 377, § 1.

Amendment Notes — The 2010 amendment deleted "subsection (3) of" following "Except as provided in" in (2); added (3); and redesignated the remaining subsections accordingly.

The first 2013 amendment (ch. 413), inserted the subdivision (a) designator in (4) and added (4)(b); and inserted "EXCLUDING ELECTION DAYS," "TOTAL NUMBER PER DIEM DAYS EARNED FOR ELECTION DAYS _____ PER DIEM RATE PER DAY EARNED x 150.00" in "Per Diem Claim Form" in (9).

The second 2013 amendment (ch. 456), added (8) and redesignated former (8) and (9) as (9) and (10).

ATTORNEY GENERAL OPINIONS

Failure of a municipal election commission to properly purge registration books and poll books in accordance with Section 23-15-153 could result in the fraudulent use of the names of deceased voters or voters who have been otherwise disqualified to cast illegal votes which could affect the validity of the election. Noel, Apr. 5, 2005, A.G. Op. 05-0129.

Each county registrar must use sound discretion in determining whether the chairman of the election commission should be the only one other than the registrar to have a key to the room where voter registration records are stored. Reasonable hours of access to the room would be established by the circuit clerk, in his or her discretion. Griffith, Aug. 8, 2005, A.G. Op. 05-0378.

The work necessitated by municipal redistricting is not a part of the regular duties of municipal election commissioners. Therefore, the municipal governing authorities may employ and compensate individual county election commissioners or they may employ and compensate individual municipal election commissioners to perform such work. Jones, Aug. 19, 2005, A.G. Op. 05-0414.

Individual county election commissioners are entitled to per diem compensation pursuant to Section 23-15-153 for conducting demonstrations of Diebold voting machines. Robinson, Feb. 24, 2006, A.G. Op. 06-0065.

There is no statutory mandate as to where the election commission must meet to conduct other than official business;

however, notice of any meeting that is not at a place and time specified by statute to conduct official business or discuss matters that may lead to the formulation of public policy must be given and the meeting must held in accordance with the State Open Meetings law. Wileman, May 26, 2006, A.G. Op. 06-0196.

Governing authorities may lawfully set the compensation of municipal election commissioners at the same rate and within the guidelines established by Section 23-15-153 for county election commissioners. Turnage, Sept. 15, 2006, A.G. Op. 06-0455.

A county election commission may continue to purge names from the registration books and poll books within 90 days of a regularly scheduled primary or general election with the exception that any program the purpose of which is to systematically remove the names of ineligible voters based on residency must be completed prior to 90 days prior to a regularly scheduled primary or general election. Jones, Dec. 8, 2006, A.G. Op. 06-0620.

The minutes of a county election commission should be available as a public record in the office of the circuit clerk. Jones, Dec. 8, 2006, A.G. Op. 06-0620.

SUBARTICLE H.

COMPLIANCE WITH HELP AMERICA VOTE ACT OF 2002.

§ 23-15-169. Secretary of State to establish administrative complaint procedure for handling grievances.

ATTORNEY GENERAL OPINIONS

The Secretary of State has the authority to issue regulations regarding Help America Vote Act (HAVA) and the authority to expend HAVA funds, with the only restriction on the expenditure of funds for purchase of voting systems being that the systems comply with HAVA requirements. Simmons, Oct. 31, 2005, A.G. Op. 05-0442.

ARTICLE 5.

TIMES OF PRIMARY AND GENERAL ELECTIONS.

SUBARTICLE A.

MUNICIPAL ELECTIONS.

§ 23-15-171. Primary elections.

ATTORNEY GENERAL OPINIONS

No authority can be found in state law for a municipal party executive committee to remove one of its members on its own motion. Martin, Aug. 5, 2005, A.G. Op. 05-0409.

ARTICLE 7.

ELECTION OFFICIALS.

SEC.

§ 23-15-211. Board of election commissioners and registrar; elections training seminar; certification of seminar participants; compensation of commissioners attending seminar; authorization by Secretary of State of additional training days; comprehensive poll worker training program; computer skills training and refresher courses for circuit clerks.

(1) There shall be:

(a) A State Board of Election Commissioners to consist of the Governor, the Secretary of State and the Attorney General, any two (2) of whom may perform the duties required of the board;

(b) A board of election commissioners in each county to consist of five (5) persons who are electors in the county in which they are to act; and

(c) A registrar in each county who shall be the clerk of the circuit court, unless he shall be shown to be an improper person to register the names of the electors in the county.

(2) The board of supervisors of each county shall pay members of the county election commission for attending training events a per diem in the amount provided in Section 23-15-153; however, except as otherwise provided in this section, the per diem shall not be paid to an election commissioner for more than twelve (12) days of training per year and shall only be paid to election commissioners who actually attend and complete a training event and obtain a training certificate.

(3) Included in this twelve (12) days shall be an elections seminar, conducted and sponsored by the Secretary of State. Election commissioners and chairpersons of each political party executive committee, or their designee, shall be required to attend.

(4) Each participant shall receive a certificate from the Secretary of State indicating that the named participant has received the elections training seminar instruction and that each participant is fully qualified to conduct an

election. Commissioners of election shall annually file the certificate with the chancery clerk. If any commissioner of election shall fail to file the certificate by April 30 of each year, his office shall be vacated, absent exigent circumstances as determined by the board of supervisors and consistent with the facts. The vacancy shall be declared by the board of supervisors and the vacancy shall be filled in the manner described by law. Prior to declaring the office vacant, the board of supervisors shall give the election commissioner notice and the opportunity for a hearing.

(5) The Secretary of State, upon approval of the board of supervisors, may authorize not more than eight (8) additional training days per year for commissioners of election in one or more counties. The board of supervisors of each county shall pay members of the county election commission for attending training on these days a per diem in the amount provided in Section 23-15-153.

(6) The Secretary of State shall develop a single, comprehensive poll worker training program to assist local election officials in providing uniform, secure elections throughout the state. The program shall include, at a minimum, training on all state and federal election laws and procedures.

(7) The Secretary of State shall develop, in conjunction with the Mississippi Community College Board:

(a) A computer skills training course for all newly elected circuit clerks that shall be completed within one hundred eighty (180) days of the commencement of their term of office; and

(b) A computer skills refresher course for all serving circuit clerks that shall be completed within one hundred eighty (180) days of the commencement of every odd-numbered term of service.

SOURCES: Derived from 1972 Code § 23-5-1 [Codes, 1871, §§ 340 et seq.; 1880, § 121; 1892, § 3601; 1906, § 4107; Hemingway's 1917, § 6741; 1930, § 6176; 1942, § 3204; Laws, 1964, 1st Ex Sess ch. 30; Laws, 1968 ch. 568, § 1; Laws, 1970, ch. 509, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 54; Laws, 1990, ch. 325, § 1; Laws, 2004, ch. 305, § 13; Laws, 2006, ch. 592, § 3; Laws, 2008, ch. 528, § 3; Laws, 2014, ch. 397, § 2, eff from and after July 1, 2014.

Editor's Note — On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

Amendment Notes — The 2008 amendment rewrote (1) and added (7).

The 2014 amendment substituted "Mississippi Community College Board" for "State Board for Community and Junior Colleges" in (7).

§ 23-15-211.1. Secretary of State designated Mississippi's chief election officer; chief election officer to gather certain information regarding elections; annual report on voter participation.

(1) For purposes of the National Voter Registration Act of 1993, the Secretary of State is designated as Mississippi's chief election officer.

(2) As the chief election officer of the State of Mississippi, the Secretary of State shall have the power and duty to gather sufficient information concerning voting in elections in this state. The Secretary of State shall gather information on voter participation and submit an annual report to the Legislature, the Governor, the Attorney General and the public.

SOURCES: Laws, 2000, ch. 430, § 6; Laws, 2008, ch. 528, § 4, eff August 7, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

Amendment Notes — The 2008 amendment added (2).

§ 23-15-212. Committee to study how election officials can be better trained in conduct of elections.

Editor's Note — Laws of 2008, ch. 528, § 1, provides:

"SECTION 1. (1) There is created the Comprehensive Election Reform Review Panel to study Mississippi's election laws, the practical application of the laws, and any possible reforms needed to improve application of those laws.

"(2) The panel shall be composed of the following members:

"(a) The Chairperson and Vice Chairperson of the House of Representatives Apportionment and Elections Committee and the Senate Elections Committee;

"(b) One (1) person appointed by the Speaker of the House of Representatives;

"(c) One (1) person appointed by the Lieutenant Governor;

"(d) The Secretary of State, or his designee;

"(e) One (1) circuit clerk appointed by the Mississippi Association of Circuit Clerks;

"(f) One (1) election commissioner appointed by the Election Commissioners Association of Mississippi; and

"(g) One (1) person appointed by the Attorney General.

"(3) The Secretary of State or his designee shall serve as chairman of the panel. The panel shall meet at the call of the chairman and at its first meeting and shall select a vice chairman from among its membership. The vice chairman shall also serve as secretary of the panel and shall be responsible for keeping all records of the panel. A majority of the members of the panel shall constitute a quorum.

"(4) The panel shall examine voter identification requirements, early voting, voter registration, absentee voting, voting patterns, education, training of election officials and any other election law reforms deemed important by the panel. The panel shall file a report with the Clerk of the House of Representatives, the Secretary of the Senate and the Governor containing its findings and recommendations regarding Mississippi election laws by not later than December 1, 2008.

"(5) Legislative members of the panel shall receive per diem, travel or other expenses, if authorized by the Management Committee of the House of Representatives and Rules Committee of the Senate, from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem or expense for attending meetings of the panel shall be paid while the Legislature is in session.

"(6) Nonlegislative members of the panel shall receive no compensation for their service on the panel but may receive reimbursement for travel expenses incurred while engaged in official business of the panel in accordance with Section 25-3-41.

"(7) The panel shall be dissolved on December 1, 2008."

§ 23-15-213. Election of county commissioners.

At the general election in 1984 and every four (4) years thereafter there shall be elected five (5) commissioners of election for each county whose terms of office shall commence on the first Monday of January following their election and who shall serve for a term of four (4) years. Each of the commissioners, before acting, shall take and subscribe the oath of office prescribed by the Constitution and file the oath in the office of the clerk of the chancery court, there to remain. While engaged in their duties, the commissioners shall be conservators of the peace in the county, with all the duties and powers of such.

The qualified electors of each supervisors district shall elect, at the general election in 1984 and every four (4) years thereafter, in their district one (1) commissioner of election. No more than one (1) commissioner shall be a resident of and reside in each supervisors district of the county; it being the purpose of this section that the county board of election commissioners shall consist of one (1) person from each supervisors district of the county and that each commissioner be elected from the supervisors district in which he resides.

Candidates for county election commissioner shall qualify by filing with the clerk of the board of supervisors of their respective counties a petition personally signed by not less than fifty (50) qualified electors of the supervisors district in which they reside, requesting that they be a candidate, by 5:00 p.m. not later than the first Monday in June of the year in which the election occurs and unless the petition is filed within the required time, their names shall not be placed upon the ballot. All candidates shall declare in writing their party affiliation, if any, to the board of supervisors, and such party affiliation shall be shown on the official ballot.

The petition shall have attached thereto a certificate of the registrar showing the number of qualified electors on each petition, which shall be furnished by the registrar on request. The board shall determine the sufficiency of the petition, and if the petition contains the required number of signatures and is filed within the time required, the president of the board shall verify that the candidate is a resident of the supervisors district in which he seeks election and that the candidate is otherwise qualified as provided by law, and shall certify that the candidate is qualified to the chairman or secretary of the county election commission and the names of the candidates shall be placed upon the ballot for the ensuing election. No county election commissioner shall serve or be considered as elected unless and until he has received a majority of the votes cast for the position or post for which he is a candidate. If a majority vote is not received in the first election, then the two (2) candidates receiving the most votes for each position or post shall be placed upon the ballot for a second election to be held three (3) weeks later in accordance with appropriate procedures followed in other elections involving runoff candidates.

Upon taking office, the county board of election commissioners shall organize by electing a chairman and a secretary.

It shall be the duty of the chairman to have the official ballot printed and distributed at each general or special election.

SOURCES: Derived from 1972 Code §§ 23-5-3 [Codes, 1871, §§ 340 et seq.; 1880, § 121; 1892, § 3602; 1906, § 4108; Hemingway's 1917, § 6742; 1930, § 6177; 1942, § 3205; Laws, 1968, ch. 568, § 2; Laws, 1978, ch. 431, § 1; Laws, 1979, ch. 359, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 55; Laws, 2000, ch. 592, § 2; Laws, 2009, ch. 437, § 1, eff August 4, 2009 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated August 4, 2009, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2009, ch. 437, § 1.

This section is set out to correct a typographical error in the fourth paragraph.

Amendment Notes — The 2009 amendment rewrote the third and fourth paragraphs.

Cross References — Procedures for contesting the qualifications of a person who has qualified pursuant to the provisions of this section as a candidate for any office elected at a general election, see § 23-15-963.

§ 23-15-215. Performance by board of supervisors of commissioners' duties.

ATTORNEY GENERAL OPINIONS

As long as the election commission performs its statutory duties, nothing can be found that gives board of supervisors any authority regarding the day-to-day operation of the commission. Jones, Dec. 8, 2006, A.G. Op. 06-0620.

§ 23-15-217. County election commissioner authorized to be candidate for other office; resignation from office; duties and powers of board of supervisors where election of county election commissioner is contested.

(1) A commissioner of election of any county may be a candidate for any other office at any election held or to be held during the four-year term for which he or she has been elected to the office of commissioner of election or with reference to which he or she has acted as such; provided that he or she has resigned from the office of election commissioner before he or she qualifies for the office which he or she desires to seek.

(2) In any case involving the election of a county election commissioner wherein there is a contest of any nature, including, but not limited to, the right of any person to vote or the counting of any challenge ballot, all the duties and powers of the commission in connection with said contest shall be performed by the board of supervisors, as is contemplated by Section 23-15-215 in cases where there are no commissioners of election in the county.

SOURCES: Derived from 1972 Code §§ 23-5-95 [Codes, 1871, § 342; 1880, § 122; 1892, § 3634; 1906, § 4141; Hemingway's 1917, § 6775; 1930, § 6213; 1942, § 3242; Laws, 1968, ch. 568, § 3; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 57; Laws, 1989, ch. 483, § 1; Laws, 1991, ch. 613, § 1; Laws, 2003, ch. 447, § 1; Laws, 2013, ch. 474, § 1, eff July 18, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965).

Editor's Note — The effective date of Chapter 474, Laws of 2013, which amended this section, is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. For that reason, the Mississippi Attorney General's Office submitted Chapter 474, Laws of 2013, to the United States Attorney General, in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated July 18, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 474 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 474, so Chapter 474 became effective from and after July 18, 2013, the date of the United States Attorney General's response letter.

Amendment Notes — The 2013 amendment in (1), substituted "he or she" for "he" three times and substituted "he or she qualifies for the office which he or she desires to seek" for "January 1 of the year in which he desires to seek the office. However, a commissioner of election of any county may be a candidate in a special election to fill a vacancy in any other office, provided he resigns as election commissioner within ten (10) days after the issuance of the notice of a special election by the appropriate authorities."

ATTORNEY GENERAL OPINIONS

The failure of a person appointed to the position of municipal election commissioner to take the oath of office results in the failure of that person to become fully qualified to assume the position, thus creating a vacancy; there was no need for the person to submit a letter of resignation. Minor, Mar. 18, 2005, A.G. Op. 05-0126.

§ 23-15-223. Appointment of county registrars and deputy registrars; liability of registrar for malfeasance or nonfeasance of deputy registrar.

The State Board of Election Commissioners, on or before the fifteenth day of February succeeding each general election, shall appoint in the several counties registrars of elections, who shall hold office for four (4) years and until their successors shall be duly qualified. The registrar is empowered to appoint deputy registrars, with the consent of the board of election commissioners, who may discharge the duties of the registrar.

The clerk of every municipality shall be appointed as such a deputy registrar, as contemplated by the National Voter Registration Act (NVRA).

The county registrar may not be held liable for any malfeasance or nonfeasance in office by any deputy registrar who is a deputy registrar by virtue of his office.

SOURCES: Derived from 1972 Code § 23-5-7 [Codes, 1892, § 3603; 1906, § 4109; Hemingway's 1917, § 6743; 1930, § 6178; 1942, § 3206; Laws, 1900, ch. 75; Laws, 1984, ch. 460, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 60; Laws, 1988, ch. 350, § 4; Laws, 2009, ch. 400, § 1, eff July 28, 2009 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 28, 2009, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2009, ch. 400, § 1.

Amendment Notes — The 2009 amendment added "as contemplated by the National Voter Registration Act (NVRA)" at the end of the second paragraph.

Federal Aspects — National Voter Registration Act (NVRA) is codified as 42 USCS §§ 1973gg et seq.

§ 23-15-225. Compensation of registrars.

(1) The registrar shall be entitled to such compensation, payable monthly out of the county treasury, which the board of supervisors of the county shall allow on an annual basis in the following amounts:

(a) For counties with a total population of more than two hundred thousand (200,000), an amount not to exceed Twenty-nine Thousand Nine Hundred Dollars ($29,900.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00).

(b) For counties with a total population of more than one hundred thousand (100,000) and not more than two hundred thousand (200,000), an amount not to exceed Twenty-five Thousand Three Hundred Dollars ($25,300.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00).

(c) For counties with a total population of more than fifty thousand (50,000) and not more than one hundred thousand (100,000), an amount not to exceed Twenty-three Thousand Dollars ($23,000.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00).

(d) For counties with a total population of more than thirty-five thousand (35,000) and not more than fifty thousand (50,000), an amount not to exceed Twenty Thousand Seven Hundred Dollars ($20,700.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00).

(e) For counties with a total population of more than twenty-five thousand (25,000) and not more than thirty-five thousand (35,000), an amount not to exceed Eighteen Thousand Four Hundred Dollars ($18,400.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00).

(f) For counties with a total population of more than fifteen thousand (15,000) and not more than twenty-five thousand (25,000), an amount not to exceed Sixteen Thousand One Hundred Dollars ($16,100.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00).

(g) For counties with a total population of more than ten thousand (10,000) and not more than fifteen thousand (15,000), an amount not to exceed Thirteen Thousand Eight Hundred Dollars ($13,800.00), but not less than Eight Thousand Fifty Dollars ($8,050.00).

(h) For counties with a total population of more than six thousand (6,000) and not more than ten thousand (10,000), an amount not to exceed Eleven Thousand Five Hundred Dollars ($11,500.00), but not less than Eight Thousand Fifty Dollars ($8,050.00).

(i) For counties with a total population of not more than six thousand (6,000), an amount not to exceed Nine Thousand Two Hundred Dollars ($9,200.00) but not less than Six Thousand Three Hundred Twenty-five Dollars ($6,325.00).

(j) For counties having two (2) judicial districts, the board of supervisors of the county may allow, in addition to the sums prescribed herein, in its discretion, an amount not to exceed Eleven Thousand Five Hundred Dollars ($11,500.00).

(2) In the event of a reregistration within such county, or a redistricting which necessitates the hiring of additional deputy registrars, the board of supervisors may by contract compensate the county registrar amounts in addition to the sums prescribed herein, in its discretion.

(3) As compensation for their services in assisting the county election commissioners in performance of their duties in the revision of the registration books and the pollbooks of the several voting precincts of the several counties and in assisting the election commissioners, executive committees or boards of supervisors in connection with any election, the registrar shall receive the same daily per diem and limitation on meeting days as provided for the board of election commissioners as set out in Sections 23-15-153 and 23-15-227 to be paid from the general fund of the county.

(4) In any case where an amount has been allowed by the board of supervisors pursuant to this section, such amount shall not be reduced or terminated during the term for which the registrar was elected.

(5) The circuit clerk shall, in addition to any other compensation provided for by law, be entitled to receive as compensation from the board of supervisors the amount of Two Thousand Five Hundred Dollars ($2,500.00) per year. This payment shall be for the performance of his duties in regard to the conduct of elections and the performance of his other duties.

(6) The municipal clerk shall, in addition to any other compensation for performance of duties, be eligible to receive as compensation from the municipality's governing authorities a reasonable amount of additional compensation for reimbursement of costs and for additional duties associated with mail-in registration of voters.

(7) The board of supervisors shall not allow any additional compensation authorized under this section for services as county registrar to any circuit

clerk who is receiving fees as compensation for his services equal to the limitation on compensation prescribed in Section 9-1-43.

SOURCES: Derived from 1972 Code § 23-5-53 [Codes, 1880, § 116; 1892, § 3622; 1906, § 4129; Hemingway's 1917, § 6763; 1930, § 6195; 1942, § 3223; Laws, 1964, ch. 510, § 1; Laws, 1977, ch. 335; Laws, 1981, ch. 500, § 1; Laws, 1983, ch. 519; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 61; Laws, 1991, ch. 440, § 6; Laws, 1997, ch. 570, § 7, eff October 1, 1997; Laws, 2008, ch. 473, § 2, eff July 31, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — Laws of 2008, ch. 473, § 4 provides:

"SECTION 4. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or July 1, 2008, whichever occurs later."

On July 31, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 473.

Amendment Notes — The 2008 amendment substituted "Two Thousand Five Hundred Dollars ($2,500.00) per year" for "Two Thousand Dollars ($2,000.00) per year" in (5).

JUDICIAL DECISIONS

1. Circuit clerk as registrar.

Since circuit clerks in Mississippi served as county registrars and Miss. Code Ann. § 23-15-225 provided that for their service as county registrar they were to receive an annual salary and a meeting day per diem, both of which were to be paid for the county general fund, the vital role that clerks played in county governance weighed in favor of finding them to be county agents for purposes of 18 U.S.C.S. § 666(d)(1). United States v. Harris, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 50575 (S.D. Miss. July 11, 2007), affirmed by 296 Fed. Appx. 402, 2008 U.S. App. LEXIS 22020 (5th Cir. Miss. 2008).

ATTORNEY GENERAL OPINIONS

Circuit clerks may claim the same number of statutory days for assisting county executive committees as they claim for assisting county election commissions. Mitchell, May 12, 2006, A.G. Op. 06-0191.

§ 23-15-227. Compensation of managers, clerks and other persons generally.

(1) The managers and clerks shall be each entitled to Seventy-five Dollars ($75.00) for each election; however, the board of supervisors may, in its discretion, pay the managers and clerks an additional amount not to exceed Fifty Dollars ($50.00) per election.

(2) The manager or other person who shall carry to the place of voting, away from the courthouse, the official ballots, ballot boxes, pollbooks and other necessities, shall be allowed Ten Dollars ($10.00) for each voting precinct for so doing. The manager or other person who acts as returning officer shall be allowed Ten Dollars ($10.00) for each voting precinct for that service. If a

person who performs the duties described in this subsection utilizes a privately owned motor vehicle to perform them, he or she shall receive for each mile actually and necessarily traveled in excess of ten (10) miles, the mileage reimbursement rate allowable to federal employees for the use of a privately owned vehicle while on official travel.

(3) The compensation authorized in this section shall be allowed by the board of supervisors, and shall be payable out of the county treasury.

(4) The compensation provided in this section shall constitute payment in full for the services rendered by the persons named for any election, whether there be one (1) election or issue voted upon, or more than one (1) election or issue voted upon at the same time.

SOURCES: Derived from 1972 Code § 23-5-183 [Codes, 1892, § 3706; 1906, § 4213; Hemingway's 1917, § 6849; 1930, § 6257; 1942, § 3286; Laws, 1932, ch. 298; Laws, 1938, ch. 306; Laws, 1950, ch. 281; Laws, 1960, ch. 452, § 1; Laws, 1966 ch. 614, § 1; Laws, 1970, ch. 511, § 1; Laws, 1973, ch. 401 § 1; Laws, 1975, ch. 497, § 2; Laws, 1979, ch. 487, § 3; Laws, 1983, ch. 510; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 62; Laws, 1987, ch. 499, § 16; Laws, 1988 ch. 402, § 1; Laws, 1995, ch. 446, § 1; Laws, 2007, ch. 434, § 5; Laws, 2013, ch. 366, § 1, eff July 17, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965).

Editor's Note — The effective date of Chapter 366, Laws of 2013, which amended this section, is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. For that reason, the Mississippi Attorney General's Office submitted Chapter 366, Laws of 2013, to the United States Attorney General, in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated July 17, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 366 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 366, so Chapter 366 became effective from and after July 17, 2013, the date of the United States Attorney General's response letter.

Amendment Notes — The 2013 amendment inserted subsection designators and added the last sentence of (2).

§ 23-15-231. Appointment of election managers; designation of bailiff.

ATTORNEY GENERAL OPINIONS

Sections 23-15-231 and 23-15-235 do not provide authority for the board of supervisors to pay pollworkers to be placed at closed voting precincts in order to direct voters to a different voting location. However, Section 19-3-40 gives the board of supervisors the authority to hire an individual to be at a closed polling place and give directions. Yancey, June 2, 2006, A.G. Op. 06-0229.

§ 23-15-235. Appointment of additional managers and clerks.

ATTORNEY GENERAL OPINIONS

Sections 23-15-231 and 23-15-235 do not provide authority for the board of supervisors to pay pollworkers to be placed at closed voting precincts in order to direct voters to a different voting location. However, Section 19-3-40 gives the board of supervisors the authority to hire an individual to be at a closed polling place and give directions. Yancey, June 2, 2006, A.G. Op. 06-0229.

§ 23-15-239. Mandatory training of managers and clerks.

(1)(a) The executive committee of each county, in the case of a primary election, or the commissioners of election of each county, in the case of all other elections, in conjunction with the circuit clerk, shall sponsor and conduct, not less than five (5) days prior to each election, training sessions to instruct managers as to their duties in the proper administration of the election and the operation of the polling place. No manager shall serve in any election unless he has received such instructions once during the twelve (12) months immediately preceding the date upon which such election is held; however, nothing in this section shall prevent the appointment of an alternate manager to fill a vacancy in case of an emergency. The county executive committee or the commissioners of election, as appropriate, shall train a sufficient number of alternates to serve in the event a manager is unable to serve for any reason.

(b) The executive committee of each county, in the case of a primary election, or the commissioners of election of each county, in the case of all other elections, in conjunction with the circuit clerk, shall sponsor and conduct annually an eight-hour training course for managers that meets criteria that the Secretary of State shall prescribe. Managers shall be required to attend this course every four (4) years from August 7, 2008. The Secretary of State shall develop a version of the course that may be taken by managers over the Internet. Training courses, including, but not limited to, online training courses, that meet criteria prescribed by the Secretary of State and are not sponsored or conducted by the executive committee or the commissioners of election, may be utilized to meet the requirements of this paragraph if the training course is approved by the Secretary of State.

(2)(a) If it is eligible under Section 23-15-266, the county executive committee may enter into a written agreement with the circuit clerk or the county election commission authorizing the circuit clerk or the county election commission to perform any of the duties required of the county executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chairman of the county executive committee and the circuit clerk or the chairman of the county election commission, as appropriate. The county executive committee shall notify the state executive committee and the Secretary of State of the existence of such agreement.

(b) If it is eligible under Section 23-15-266, the municipal executive committee may enter into a written agreement with the municipal clerk or the municipal election commission authorizing the municipal clerk or the municipal election commission to perform any of the duties required of the municipal executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chairman of the municipal executive committee and the municipal clerk or the chairman of the municipal election commission, as appropriate. The municipal executive committee shall notify the state executive committee and the Secretary of State of the existence of such agreement.

(3) The board of supervisors, in their discretion, may compensate managers who attend such training sessions. The compensation shall be at a rate of not less than the federal hourly minimum wage nor more than Twelve Dollars ($12.00) per hour. Managers shall not be compensated for more than sixteen (16) hours of attendance at the training sessions regardless of the actual amount of time that they attended the training sessions.

(4) The time and location of the training sessions required pursuant to this section shall be announced to the general public by posting a notice thereof at the courthouse and by delivering a copy of the notice to the office of a newspaper having general circulation in the county five (5) days before the date upon which the training session is to be conducted. Persons who will serve as poll watchers for candidates and political parties, as well as members of the general public, shall be allowed to attend the sessions.

(5) Subject to the following annual limitations, the commissioners of election shall be entitled to receive a per diem in the amount of Eighty-four Dollars ($84.00), to be paid from the county general fund, for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties for the necessary time spent in conducting training sessions as required by this section:

(a) In counties having less than fifteen thousand (15,000) residents according to the latest federal decennial census, not more than five (5) days per year;

(b) In counties having fifteen thousand (15,000) residents according to the latest federal decennial census but less than thirty thousand (30,000) residents according to the latest federal decennial census, not more than eight (8) days per year;

(c) In counties having thirty thousand (30,000) residents according to the latest federal decennial census but less than seventy thousand (70,000) residents according to the latest federal decennial census, not more than ten (10) days per year;

(d) In counties having seventy thousand (70,000) residents according to the latest federal decennial census but less than ninety thousand (90,000) residents according to the latest federal decennial census, not more than twelve (12) days per year;

(e) In counties having ninety thousand (90,000) residents according to the latest federal decennial census but less than one hundred seventy thousand (170,000) residents according to the latest federal decennial census, not more than fifteen (15) days per year;

(f) In counties having one hundred seventy thousand (170,000) residents according to the latest federal decennial census but less than two hundred thousand (200,000) residents according to the latest federal decennial census, not more than eighteen (18) days per year;

(g) In counties having two hundred thousand (200,000) residents according to the latest federal decennial census but less than two hundred twenty-five thousand (225,000) residents according to the latest federal decennial census, not more than nineteen (19) days per year;

(h) In counties having two hundred twenty-five thousand (225,000) residents according to the latest federal decennial census but less than two hundred fifty thousand (250,000) residents according to the latest federal decennial census, not more than twenty-two (22) days per year;

(i) In counties having two hundred fifty thousand (250,000) residents according to the latest federal decennial census but less than two hundred seventy-five thousand (275,000) residents according to the latest federal decennial census, not more than thirteen (13) days per year;

(j) In counties having two hundred seventy-five thousand (275,000) residents according to the latest federal decennial census or more, not more than fourteen (14) days per year.

(6) Commissioners of election shall claim the per diem authorized in subsection (5) of this section in the manner provided for in Section 23-15-153(6).

SOURCES: Laws, 1986, ch. 495, § 68; Laws, 1989, ch. 396, § 1; Laws, 1999, ch. 441, § 1; Laws, 2001, ch. 523, § 2; Laws, 2006, ch. 592, § 4; Laws, 2007, ch. 565, § 2; Laws, 2008, ch. 528, § 5, eff August 7, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

Amendment Notes — The 2008 amendment added (1)(b); and substituted "sixteen (16) hours" for "eight (8) hours" in (3).

JUDICIAL DECISIONS

3. Relation to other laws.

Black chairman of a county political party executive committee was guilty of racial discrimination under § 2 of the Voting Rights Act because, inter alia, he prevented poll watchers from challenging the sufficiency of black voters' absentee voter applications and ballots, in derogation of their duties under Miss. Code Ann. § 23-15-239, and for the purpose of diluting the white vote. United States v. Brown, 494 F. Supp. 2d 440 (S.D. Miss. June 29, 2007), affirmed by 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

§ 23-15-259. Authority of boards of supervisors; availability of facilities for use as polling places.

ATTORNEY GENERAL OPINIONS

A county board of supervisors may authorize improvements to property to be used as voting precincts owned privately or by a fire protection district provided the board determines that such improvements are necessary and that the value of such improvements does not exceed a reasonable rental amount as predetermined by the board. White, Feb. 10, 2006, A.G. Op. 06-0040.

§ 23-15-263. Duties of county executive committees at primary elections.

JUDICIAL DECISIONS

2. Remedies.
3. Illustrative cases.

2. Remedies.

Remedial order was proper because it was tailored to specific conduct of a county political party executive committee and its chairman that violated § 2 of the Voting Rights Act, 42 U.S.C.S. § 1973, it was not so broad as to deprive the committee and its chairman of their First Amendment rights, and did not prevent the committee from performing its electoral duties under Miss. Code Ann. § 23-15-263(1). United States v. Brown, 561 F.3d 420 (5th Cir. 2009).

3. Illustrative cases.

Government properly established, for purposes of Fed. R. Civ. P. 52, that a political party executive committee and its chairman violated § 2 of the Voting Rights Act, 42 U.S.C.S. § 1973, by intentionally diluting the voting power of white members of the party by obtaining large numbers of defective absentee ballots from black voters, facilitating improper counting of absentee ballots, and permitting improper assistance of black voters, contrary to the requirements of Miss. Code Ann. §§ 23-15-263, 23-15-715, and 23-15-549. United States v. Brown, 561 F.3d 420 (5th Cir. 2009).

§ 23-15-266. Executive committee authorized to enter into agreements regarding conduct of elections if certain criteria met.

A county or municipal executive committee shall be eligible to enter into written agreements with a circuit or municipal clerk or a county or municipal election commission as provided for in Section 23-15-239(2), 23-15-265(2),

23-15-267(4), 23-15-333(4), 23-15-335(2) or 23-15-597(2), only if the political party with which such county or municipal executive committee is affiliated:

(a) Has cast for its candidate for Governor in the last two (2) gubernatorial elections ten percent (10%) of the total vote cast for governor; or

(b) Has cast for its candidate for Governor in three (3) of the last five (5) gubernatorial elections twenty-five percent (25%) of the total vote cast for Governor.

SOURCES: Laws, 2001, ch. 523, § 1, eff June 20, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the introductory paragraph. The word "Sections" was changed to "Section" preceding "23-15-239(2), 23-15-265(2), 23-15-267(4), 23-15-333(4), 23-15-335(2) or 23-15-597(2)." The Joint Committee ratified the correction at its August 5, 2008, meeting.

ARTICLE 9.

SUPERVISOR'S DISTRICTS AND VOTING PRECINCTS.

SEC.

§ 23-15-283. Alteration of boundaries.

The board of supervisors shall have power to alter the boundaries of the supervisors districts, voting precincts and the voting place therein. If the board of supervisors orders a change in the boundaries, they shall notify the commissioners of election, who shall at once cause the registration books of voting precincts affected by the order to be changed to conform to the change so as to contain only the names of the qualified electors in the voting precincts as made by the change of boundaries. Upon the order of change in the boundaries of any voting precinct or the voting place therein, the board of supervisors shall notify the Office of the Secretary of State and provide the Office of the Secretary of State a legal description and a map of any boundary change. No change shall be implemented or enforced until the requirements of this section have been met.

SOURCES: Derived from 1972 Code § 23-5-11 [Codes, 1880, § 110; 1892, § 3605; 1906, § 4111; Hemingway's 1917, § 6745; 1930, § 6180; 1942, § 3208; Laws, 1980, ch. 425, § 3; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 85; Laws, 2008, ch. 528, § 6, eff August 7, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

Amendment Notes — The 2008 amendment rewrote the section to remove the requirement that altered boundaries conform to visible natural or artificial boundaries, such as streets, etc.

§ 23-15-285. Entry of boundaries and alterations thereto on minutes of board of supervisors; limit on number of voters within each precinct or ballot box.

The board of supervisors shall cause an entry to be made on the minutes of the board at some meeting, as early as convenient, defining the boundaries of the several supervisors districts and voting precincts in the county, and designating the voting place in each voting precinct; and as soon as practicable after any change is made in any supervisors district, voting precinct or any voting place, the board of supervisors shall cause such change to be entered on the minutes of the board in such manner as to be easily understood. The changed boundaries shall conform to visible natural or artificial boundaries such as streets, highways, railroads, rivers, lakes, bayous or other obvious lines of demarcation, with the exception of county lines and municipal corporate limits.

No voting precinct shall have more than five hundred (500) qualified electors residing in its boundaries. Subject to the provisions of this section, each board of supervisors of the various counties of this state shall as soon as practical after the effective date of this section, alter or change the boundaries of the various voting precincts to comply herewith and shall from time to time make such changes in the boundaries of voting precincts so that there shall never be more than five hundred (500) qualified electors within the boundaries of the various voting precincts of this state; provided further, this limitation shall not apply to voting precincts that are so divided, alphabetically or otherwise, so as to have less than five hundred (500) qualified electors in any one (1) box within a voting precinct. However, the limitation of five hundred (500) qualified electors to the voting precinct shall not apply to voting precincts in which voting machines are used at all elections held in that voting precinct. No change in any supervisors district or voting precinct shall take effect less than thirty (30) days before the qualifying deadline for the office of county supervisor. Any change in any boundary of a supervisors district or voting precinct that is approved under the Voting Rights Act of 1965 less than thirty (30) days before such qualifying deadline shall be effective only for an election for county supervisor held in a year following the year in which such change is approved under the Voting Rights Act of 1965. Provided, however, that, with the exception of county lines and municipal corporate limits, such altered boundaries shall conform to visible natural or artificial boundaries such as streets, highways, railroads, rivers, lakes, bayous or other obvious lines of demarcation.

SOURCES: Derived from 1972 Code § 23-5-13 [Codes, 1880, § 103; 1892, § 3606; 1906, § 4112; Hemingway's 1917, § 6746; 1930, § 6181; 1942, § 3209; Laws, 1964, ch. 509, § 1; Laws, 1980, ch. 425, § 4; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 86; Laws, 2012, ch. 353, § 1, eff October 5, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated October 5, 2012, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 353, Laws of 2012.

Amendment Notes — The 2012 amendment rewrote the section, which read: "The board of supervisors shall cause an entry to be made on the minutes of the board at some meeting, as early as convenient, defining the boundaries of the several supervisors districts and voting precincts in the county, and designating the voting place in each voting precinct; and as soon as practicable after any alteration shall have been made in any supervisors district or voting precinct, or any voting place changed, shall cause such alteration or change to be entered on the minutes of the board in such manner as to be easily understood; provided, however, that no voting precinct shall have more than five hundred (500) qualified electors residing in its boundaries and the board of supervisors of the various counties of this state shall as soon as practical after the effective date of this section, alter or change the boundaries of the various voting precincts to comply herewith and shall from time to time make such alterations or changes in the boundaries of voting precincts so that there shall never be more than five hundred (500) qualified electors within the boundaries of the various voting precincts of this state; provided further, this limitation shall not apply wherein voting precincts are so divided, alphabetically or otherwise, so as to have less than five hundred (500) qualified electors in any one (1) box within a voting precinct; provided, however, that the limitation of five hundred (500) qualified electors to the voting precinct shall not apply wherein voting machines are used at all elections held in any voting precinct; but no alteration of any supervisor's district or voting precinct shall take effect within two (2) months before an election to be held in the district or voting precinct. Provided, however, that, with the exception of county lines and municipal corporate limits, such altered boundaries shall conform to visible natural or artificial boundaries such as streets, highways, railroads, rivers, lakes, bayous or other obvious lines of demarcation."

ARTICLE 11.

NOMINATIONS.

SEC.

§ 23-15-291. Nomination for state, district, county and county district office to be by primary election.

JUDICIAL DECISIONS

1. Authority of a political party.

Mississippi law regarding the power to change election procedures supported the position of plaintiffs, the Mississippi Democratic Party and its Executive Committee, that regardless of what actions a political party's executive committee had taken, they could only act when expressly authorized by Miss. Code Ann. § 23-15-291, and the Executive Committee did not have the authority to implement a closed primary with mandatory party registration; thus, although the Executive Committee had not voted to change their qualifications to include membership cards and had not voted to change the primary system to fully closed, the argument by defendants, the Mississippi Governor, Secretary of State, and Attorney General, that the Executive Committee's failure to pass such measures or obtain preclearance from the Department of Justice pursuant to 42 U.S.C.S. § 1973b(b), was rejected because the Executive Committee did in fact vote to approve the lawsuit challenging the constitutionality of Mississippi's primary system. Miss. State Democratic Party v. Barbour, 491 F. Supp. 2d 641 (N.D. Miss. 2007), reversed by, vacated by 529 F.3d 538, 2008 U.S. App. LEXIS 11395 (5th Cir. Miss. 2008).

§ 23-15-296. Written notification to Secretary of State.

All political parties registered with the Secretary of State shall notify the Secretary of State in writing within two (2) working days of each qualifying deadline of the name, mailing address and office sought of all candidates for statewide, state district and legislative office who have submitted qualifying papers to the political party on or before the qualifying deadline, and all political parties shall notify the Secretary of State of any such candidate who withdraws his candidacy within two (2) working days of receiving written notice of the withdrawal.

SOURCES: Laws, 1999, ch. 301, § 6; Laws, 2010, ch. 320, § 1, eff July 15, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 320, § 1.

Amendment Notes — The 2010 amendment deleted "multicounty" following "state district and"; and deleted the former last sentence.

§ 23-15-299. Time for payment of fee; written statement to accompany fee; recordation and disbursement of fee; determination of candidate's qualifications; declaration of nominee in single candidate race; special qualifying deadline in 2011 if census received late.

(1)(a) Assessments made pursuant to paragraphs (a), (b) and (c) of Section 23-15-297 and assessments made pursuant to paragraph (d) of Section 23-15-297 for legislative offices shall be paid by each candidate to the Secretary of the State Executive Committee with which the candidate is affiliated by 5:00 p.m. on March 1 of the year in which the primary election for the office is held or on the date of the qualifying deadline provided by statute for the office, whichever is earlier; however, no such assessments may be paid before January 1 of the year in which the primary election for the office is held.

(b) If the 2010 census redistricting information that is provided to the state in accordance with Public Law 94-171 has not been received from the United States Secretary of Commerce by the Governor of the State of Mississippi by January 1, 2011, then the qualifying deadline for legislative offices shall be changed for the year 2011 only, as follows: Assessments made pursuant to paragraph (d) of Section 23-15-297 for legislative offices shall be paid by each candidate to the Secretary of the State Executive Committee with which the candidate is affiliated by 5:00 p.m. on June 1, 2011. This paragraph (b) shall stand repealed on July 1, 2012; however, no such assessments may be paid before January 1 of the year in which the election for the office is held.

(2) Assessments made pursuant to paragraphs (d) and (e) of Section 23-15-297, other than assessments made for legislative offices, shall be paid by each candidate to the circuit clerk of such candidate's county of residence by 5:00 p.m. on March 1 of the year in which the primary election for the office is held or on the date of the qualifying deadline provided by statute for the office, whichever is earlier; however, no such assessments may be paid before January 1 of the year in which the election for the office is held. The circuit clerk shall forward the fee and all necessary information to the secretary of the proper county executive committee within two (2) business days.

(3) Assessments made pursuant to paragraphs (f) and (g) of Section 23-15-297 must be paid by each candidate to the Secretary of the State Executive Committee with which the candidate is affiliated by 5:00 p.m. sixty (60) days before the presidential preference primary in years in which a presidential preference primary is held; however, no such assessments may be paid before January 1 of the year in which the primary election for the office is held. Assessments made pursuant to paragraphs (f) and (g) of Section 23-15-297, in years when a presidential preference primary is not being held, shall be paid by each candidate to the Secretary of the State Executive Committee with which the candidate is affiliated by 5:00 p.m. on March 1 of the year in which the primary election for the office is held; however, no such assessments may

be paid before January 1 of the year in which the primary election for the office is held.

(4)(a) The fees paid pursuant to subsections (1), (2) and (3) of this section shall be accompanied by a written statement containing the name and address of the candidate, the party with which he or she is affiliated and the office for which he or she is a candidate.

(b) The State Executive Committee shall transmit to the Secretary of State a copy of the written statements accompanying the fees paid pursuant to subsections (1) and (2) of this section. All copies must be received by the Office of the Secretary of State by not later than 6:00 p.m. on the date of the qualifying deadline; provided, however, the failure of the Office of the Secretary of State to receive such copies by 6:00 p.m. on the date of the qualifying deadline shall not affect the qualification of a person who pays the required fee and files the required statement by 5:00 p.m. on the date of the qualifying deadline. The name of any person who pays the required fee and files the required statement after 5:00 p.m. on the date of the qualifying deadline shall not be placed on the primary election ballot.

(5) The secretary or circuit clerk to whom such payments are made shall promptly receipt for same stating the office for which such candidate making payment is running and the political party with which he or she is affiliated, and he or she shall keep an itemized account in detail showing the exact time and date of the receipt of each payment received by him or her and, where applicable, the date of the postmark on the envelope containing the fee and from whom, and for what office the party paying same is a candidate.

(6) The secretaries of the proper executive committee shall hold said funds to be finally disposed of by order of their respective executive committees. Such funds may be used or disbursed by the executive committee receiving same to pay all necessary traveling or other necessary expenses of the members of the executive committee incurred in discharging their duties as committeemen, and of their secretary and may pay the secretary such salary as may be reasonable.

(7) Upon receipt of the proper fee and all necessary information, the proper executive committee shall then determine whether each candidate is a qualified elector of the state, state district, county or county district which they seek to serve, and whether each candidate meets all other qualifications to hold the office he is seeking or presents absolute proof that he will, subject to no contingencies, meet all qualifications on or before the date of the general or special election at which he could be elected to office. The executive committee shall determine whether the candidate has taken the steps necessary to qualify form more than one (1) office at the election. The committee also shall determine whether any candidate has been convicted of any felony in a court of this state, or has been convicted on or after December 8, 1992, of any offense in another state which is a felony under the laws of this state, or has been convicted of any felony in a federal court on or after December 8, 1992. Excepted from the above are convictions of manslaughter and violations of the United States Internal Revenue Code or any violations of the tax laws of this

state unless the offense also involved misuse or abuse of his office or money coming into his hands by virtue of his office. If the proper executive committee finds that a candidate either (a) is not a qualified elector, (b) does not meet all qualifications to hold the office he seeks and fails to provide absolute proof, subject to no contingencies, that he will meet the qualifications on or before the date of the general or special election at which he could be elected, or (c) has been convicted of a felony as described in this subsection, and not pardoned, then the name of such candidate shall not be placed upon the ballot. If the proper executive committee determines that the candidate has taken the steps necessary to qualify for more than one (1) office at the election, the action required by Section 23-15-905, shall be taken.

Where there is but one (1) candidate for each office contested at the primary election, the proper executive committee when the time has expired within which the names of candidates shall be furnished shall declare such candidates the nominees.

(8) No candidate may qualify by filing the information required by this section by using the Internet.

SOURCES: Derived from 1942 Code § 3118 [Codes, 1906, § 3715; Hemingway's 1917, § 6407; 1930, § 5876; Laws, 1928, ch. 128; Laws, 1944, ch. 172; Laws, 1947, 1st Ex Sess, ch. 14; Laws, 1948, ch. 307; Laws, 1960, ch. 477; repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346], and § 3121 [Codes, 1930, § 5879; Laws, 1944, ch. 170; Laws, 1947, 1st Ex. Sess. ch 18; Laws, 1962, chs. 566, 567; Laws, 1976, ch. 481, § 2; repealed by Laws, 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 91; Laws, 1987, ch. 499, § 3; Laws, 2000, ch. 592, § 3; Laws, 2003, ch. 428, § 1; Laws, 2006, ch. 574, § 14; Laws, 2007, ch. 604, § 2, eff September 10, 2007 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — This section is being reprinted in the supplement to reflect the preclearance of the amendment to this section by Laws of 2007, ch. 604.

On September 10, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 604.

ATTORNEY GENERAL OPINIONS

A firefighter, or any other employee, who works a shift of twenty-four consecutive hours, exhausts three days of paid leave for each absence resulting from military service described in Miss. Code Ann. § 33-1-21, and is therefore entitled to be paid for up to five twenty-four hour shifts as the equivalent of the fifteen days paid leave authorized in the statute. Odom, March 23, 2007, A.G. Op. #07-00147, 2007 Miss. AG LEXIS 63.

An expenditure of funds received from candidate qualifications could lawfully be made for the purchase of a laptop computer if a party executive committee as a whole determines, consistent with the facts, that the purchase constitutes an expense incurred in the discharge of the duties of members of the executive committee or their secretaries. Walsh, March 16, 2007, A.G. Op. #07-000143, 2007 Miss. AG LEXIS 114.

§ 23-15-301. Payment of election expenses.

ATTORNEY GENERAL OPINIONS

Since programming DRE units is the equivalent of printing ballots and is an expense to be borne by the county under Section 23-15-301, a circuit clerk or election commissioner who enters an agreement to perform that task with an executive committee would be entitled to compensation in an amount agreed upon by the two parties and approved by the county board of supervisors. Mitchell, May 12, 2006, A.G. Op. 06-0191.

§ 23-15-305. Majority vote required for nomination; run-off elections.

RESEARCH REFERENCES

ALR. Validity of Runoff Voting Election Methodology. 67 A.L.R.6th 609.

§ 23-15-309. Nomination for elective municipal office to be made at primary election; fee requirements; determination of candidate's qualifications.

(1) Nominations for all municipal officers which are elective shall be made at a primary election, or elections, to be held in the manner prescribed by law. All persons desiring to be candidates for the nomination in the primary elections shall first pay Ten Dollars ($10.00) to the clerk of the municipality, at least sixty (60) days prior to the first primary election, no later than 5:00 p.m. on such deadline day.

(2) The fee paid pursuant to subsection (1) of this section shall be accompanied by a written statement containing the name and address of the candidate, the party with which he is affiliated, and the office for which he is a candidate.

(3) The clerk shall promptly receipt the payment, stating the office for which the person making the payment is running and the political party with which such person is affiliated. The clerk shall keep an itemized account in detail showing the time and date of the receipt of such payment received by him, from whom such payment was received, the party with which such person is affiliated and for what office the person paying the fee is a candidate. The clerk shall promptly supply all necessary information and pay over all fees so received to the secretary of the proper municipal executive committee. Such funds may be used and disbursed in the same manner as is allowed in Section 23-15-299 in regard to other executive committees.

(4) Upon receipt of the above information, the proper municipal executive committee shall then determine whether each candidate is a qualified elector of the municipality, and of the ward if the office sought is a ward office, shall determine whether each candidate either meets all other qualifications to hold the office he is seeking or presents absolute proof that he will, subject to no

contingencies, meet all qualifications on or before the date of the general or special election at which he could be elected to office. The executive committee shall determine whether the candidate has taken the steps necessary to qualify form more than one (1) office at the election. The committee also shall determine whether any candidate has been convicted of any felony in a court of this state, or has been convicted on or after December 8, 1992, of any offense in another state which is a felony under the laws of this state, or has been convicted of any felony in a federal court on or after December 8, 1992. Excepted from the above are convictions of manslaughter and violations of the United States Internal Revenue Code or any violations of the tax laws of this state unless such offense also involved misuse or abuse of his office or money coming into his hands by virtue of his office. If the proper municipal executive committee finds that a candidate either (a) does not meet all qualifications to hold the office he seeks and fails to provide absolute proof, subject to no contingencies, that he will meet the qualifications on or before the date of the general or special election at which he could be elected, or (b) has been convicted of a felony as described in this subsection and not pardoned, then the name of such candidate shall not be placed upon the ballot. If the executive committee determines that the candidate has taken the steps necessary to qualify for more than one (1) office at the election, the action required by Section 23-15-905, shall be taken.

(5) Where there is but one (1) candidate, the proper municipal executive committee when the time has expired within which the names of candidates shall be furnished shall declare such candidate the nominee.

SOURCES: Derived from 1942 Code § 3152 [Codes, 1906, § 3726; Hemingway's 1917, § 6417; 1930, § 5905; Laws, 1910, ch. 209; Laws, 1950, ch. 499; Laws, 1952 ch. 379; Laws, 1982, chs. 477, § 3, 484, § 1; repealed by Laws, 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 96; Laws, 1987, ch. 499, § 4; Laws, 2000, ch. 549, § 1; Laws, 2000, ch. 592, § 4; Laws, 2007, ch. 604, § 3, eff September 10, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — This section is being reprinted in the supplement to reflect the preclearance of the amendment to this section by Laws of 2007, ch. 604.

On September 10, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 604.

ATTORNEY GENERAL OPINIONS

A party executive committee has no authority to disqualify or refuse to certify a candidate upon its finding that the candidate misused or abused his office or money coming into his hands by virtue of his office unless there is a felony conviction relating to such alleged misconduct. Mullins, Apr. 8, 2005, A.G. Op. 05-0176.

§ 23-15-313. Selection of temporary executive committee in municipality not having party executive committee; notice to public; county executive committee to serve as municipal executive committee under certain circumstances; person convicted of felony barred from serving as member of municipal executive committee.

(1) If there be any political party, or parties, in any municipality which shall not have a party executive committee for such municipality, such political party, or parties, shall within thirty (30) days of the date for which a candidate for a municipal office is required to qualify in that municipality select qualified electors of that municipality and of that party's political faith to serve on a temporary municipal executive committee until members of a municipal executive committee are elected at the next regular election for executive committees. The temporary municipal executive committee shall be selected in the following manner: The chairman of the county executive committee of the party desiring to select a temporary municipal executive committee shall call, upon petition of five (5) or more members of that political faith, a mass meeting of the qualified electors of their political faith who reside in such municipality to meet at some convenient place within such municipality, at a time to be designated in the call, and at such mass convention the members of that political faith shall select a temporary municipal executive committee which shall serve until members of a municipal executive committee are elected at the next regular election for executive committees. The public shall be given notice of such mass meeting as provided in Section 23-15-315. The chairman of the county executive committee shall authorize the call within five (5) calendar days of receipt of the petition. If the chairman of the county executive committee is either incapacitated, unavailable or nonresponsive and does not authorize the mass call within five (5) calendar days of receipt of the petition, any elected officer of the county executive committee may authorize the call within five (5) calendar days. If no elected officer of the county executive committee acts to approve such petition after an additional five (5) calendar days from the date, the chair of the county executive committee not taking action as provided by this section, the petitioners shall be authorized to produce the call themselves.

(2) If no municipal executive committee is selected or otherwise formed before an election, the county executive committee may serve as the temporary municipal executive committee and exercise all of the duties of the municipal executive committee for the municipal election. After a county executive committee has fulfilled its duties as the temporary municipal executive committee, as soon as practicable thereafter, the county executive committee shall select a municipal executive committee no later than before the next municipal election.

(3) A person who has been convicted of a felony in a court of this state or any other state or a court of the United States, shall be barred from serving as a member of a municipal executive committee.

SOURCES: Derived from 1942 Code § 3154 [Codes, Hemingway's 1917, §§ 6418, 6419; 1930, § 5907; Laws, 1910, ch. 209; repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 98; Laws, 2010, ch. 428, § 1, eff July 22, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 22, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 428, § 1.

Amendment Notes — The 2010 amendment rewrote the section, revising how citizens of a municipality are chosen to serve on a temporary municipal executive committee and barring persons who have been convicted of a felony from serving on a municipal executive committee.

ATTORNEY GENERAL OPINIONS

In order for a political party to have nominees whose names are to be placed on the municipal general election ballot, there must be either a permanent municipal executive committee representing the party or a temporary committee representing said party. Gilless, Apr. 1, 2005, A.G. Op. 05-0153.

§ 23-15-315. Publication of notice to public.

The county executive committee chairman shall publish a copy of his call for a meeting in some newspaper published at least once per week in the municipality affected for three (3) weeks preceding the date set for the mass convention, or if there be no newspaper published in the municipality, then in some newspaper having general circulation in the municipality and by posting notices continuously in three (3) public places in the municipality, one (1) of which shall be city hall or be the regular location where the municipal governing authority meets to conduct business not less than three (3) weeks before the date for the mass convention.

SOURCES: Derived from 1942 Code § 3155 [Codes, Hemingway's 1917, § 6420; 1930, § 5908; Laws, 1910, ch. 209; repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 99; Laws, 2010, ch. 428, § 2; Laws, 2013, ch. 391, § 2, eff August 1, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965.)

Editor's Note — The effective date of Chapter 391, Laws of 2013, which amended this section, is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. For that reason, the Mississippi Attorney General's Office submitted Chapter 391, Laws of 2013, to the United States Attorney General, in order to technically meet the requirements of

Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated August 1, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 391 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 391, so Chapter 391 became effective from and after August 1, 2013, the date of the United States Attorney General's response letter.

By letter dated July 22, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 428, § 2.

Amendment Notes — The 2010 amendment deleted "chairman of the" preceding "county executive committee"; inserted "then in some newspaper having general circulation in the municipality and," and "one (1) of which shall be city hall or be the regular location where the municipal governing authority meets to conduct business"; and made minor stylistic changes.

The 2013 amendment inserted "chairman" following "county executive committee," "at least once per week" and "continuously" following "municipality and by posting notices."

§ 23-15-317. Nomination of nominee when vacancy in nomination occurs between primary election and general election; procedure for withdrawal based upon legitimate nonpolitical reason.

ATTORNEY GENERAL OPINIONS

If a nominee withdraws for a legitimate nonpolitical reason as defined in Section 23-15-317 and his sworn affidavit is approved by the State Board of Election Commissioners, the municipal party executive committee would then be required to name a substitute nominee. If a nominee withdraws and no affidavit is submitted and approved, said executive committee would have no authority to name a substitute nominee. In either case, the nominee has the right to withdraw his candidacy pursuant to Section 23-15-363. Baum, May 20, 2005, A.G. Op. 05-0237.

ARTICLE 13.

BALLOTS.

SUBARTICLE B.

OTHER ELECTIONS.

SEC.

§ 23-15-359. Names of candidates to be printed on ballot; filing of petition for office; inapplicability of section to municipal elections; special elections; determination of candidate's qualifications; declaration of nominee in single candidate race.

(1) The ballot shall contain the names of all party nominees certified by the appropriate executive committee, and independent and special election candidates who have timely filed petitions containing the required signatures. A petition requesting that an independent or special election candidate's name be placed on the ballot for any office shall be filed as provided for in subsection (3) or (4) of this section, as appropriate, and shall be signed by not less than the following number of qualified electors:

(a) For an office elected by the state at large, not less than one thousand (1,000) qualified electors.

(b) For an office elected by the qualified electors of a Supreme Court district, not less than three hundred (300) qualified electors.

(c) For an office elected by the qualified electors of a congressional district, not less than two hundred (200) qualified electors.

(d) For an office elected by the qualified electors of a circuit or chancery court district, not less than one hundred (100) qualified electors.

(e) For an office elected by the qualified electors of a senatorial or representative district, not less than fifty (50) qualified electors.

(f) For an office elected by the qualified electors of a county, not less than fifty (50) qualified electors.

(g) For an office elected by the qualified electors of a supervisors district or justice court district, not less than fifteen (15) qualified electors.

(2)(a) Unless the petition required above shall be filed as provided for in subsection (3) or (4) of this section, as appropriate, the name of the person requested to be a candidate, unless nominated by a political party, shall not be placed upon the ballot. The ballot shall contain the names of each candidate for each office, and such names shall be listed under the name of the political party such candidate represents as provided by law and as certified to the circuit clerk by the state executive committee of such political party. In the event such candidate qualifies as an independent as provided in this section, he shall be listed on the ballot as an independent candidate.

(b) The name of an independent or special election candidate who dies before the printing of the ballots, shall not be placed on the ballots.

(3) Petitions for offices described in paragraphs (a), (b), (c), (d) and (e) of subsection (1) of this section shall be filed with the State Board of Election Commissioners by no later than 5:00 p.m. on the same date by which candidates for nominations in the political party primary elections are required to pay the fee provided for in Section 23-15-297, Mississippi Code of 1972; however, no petition may be filed before January 1 of the year in which the election for the office is held.

(4) Petitions for offices described in paragraphs (f) and (g) of subsection (1) of this section shall be filed with the proper circuit clerk by no later than 5:00

p.m. on the same date by which candidates for nominations in the political party elections are required to pay the fee provided for in Section 23-15-297; however, no petition may be filed before January 1 of the year in which the election for the office is held. The circuit clerk shall notify the county commissioners of election of all persons who have filed petitions with such clerk. Such notification shall occur within two (2) business days and shall contain all necessary information.

(5) The commissioners may also have printed upon the ballot any local issue election matter that is authorized to be held on the same date as the regular or general election pursuant to Section 23-15-375; however, the ballot form of such local issue must be filed with the commissioners of election by the appropriate governing authority not less than sixty (60) days previous to the date of the election.

(6) The provisions of this section shall not apply to municipal elections or to the election of the offices of justice of the Supreme Court, judge of the Court of Appeals, circuit judge, chancellor, county court judge and family court judge.

(7) Nothing in this section shall prohibit special elections to fill vacancies in either house of the Legislature from being held as provided in Section 23-15-851. In all elections conducted under the provisions of Section 23-15-851, there shall be printed on the ballot the name of any candidate who, not having been nominated by a political party, shall have been requested to be a candidate for any office by a petition filed with the State Board of Election Commissioners and signed by not less than fifty (50) qualified electors.

(8) The appropriate election commission shall determine whether each candidate is a qualified elector of the state, state district, county or county district they seek to serve, and whether each candidate meets all other qualifications to hold the office he is seeking or presents absolute proof that he will, subject to no contingencies, meet all qualifications on or before the date of the general or special election at which he could be elected to office. The election commission shall determine whether the candidate has taken the steps necessary to qualify for more than one (1) office at the election. The election commission also shall determine whether any candidate has been convicted of any felony in a court of this state, or has been convicted on or after December 8, 1992, of any offense in another state which is a felony under the laws of this state, or has been convicted of any felony in a federal court on or after December 8, 1992. Excepted from the above are convictions of manslaughter and violations of the United States Internal Revenue Code or any violations of the tax laws of this state, unless the offense also involved misuse or abuse of his office or money coming into his hands by virtue of his office. If the appropriate election commission finds that a candidate either (a) is not a qualified elector, (b) does not meet all qualifications to hold the office he seeks and fails to provide absolute proof, subject to no contingencies, that he will meet the qualifications on or before the date of the general or special election at which he could be elected, or (c) has been convicted of a felony as described in this subsection, and not pardoned, then the name of such candidate shall not be placed upon the ballot. If the appropriate election commission determines

that the candidate has taken the steps necessary to qualify for more than one (1) office at the election, the action required by Section 23-15-905, shall be taken.

(9) If after the deadline to qualify as a candidate for an office or after the time for holding any party primary for an office, there shall be only one (1) person who has duly qualified to be a candidate for the office in the general election, the name of such person shall be placed on the ballot; provided, however, that if there shall be not more than one (1) person duly qualified to be a candidate for each office on the general election ballot, the election for all offices on the ballot shall be dispensed with and the appropriate election commission shall declare each candidate elected without opposition if the candidate meets all the qualifications to hold the office as determined pursuant to a review by the commission in accordance with the provisions of subsection (8) of this section and if the candidate has filed all required campaign finance disclosure reports as required by Section 23-15-807.

(10) The petition required by this section may not be filed by using the Internet.

SOURCES: Derived from 1972 Code § 23-5-134 [Laws, 1978, ch. 429, § 1; Laws, 1982, ch. 477, § 4; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 109; Laws, 1987, ch. 499, § 5; Laws, 1989, ch. 431, § 2; Laws, 2000, ch. 592, § 5; Laws, 2002, ch. 336, § 1; Laws, 2006, ch. 574, § 15; Laws, 2007, ch. 570, § 2; Laws, 2007, ch. 604, § 4; Laws, 2008, ch. 554, § 1; Laws, 2010, ch. 320, § 2, eff July 15, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — On September 10, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 570.

On September 10, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 604.

On July 31, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 554.

By letter dated July 22, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 320.

Amendment Notes — The 2008 amendment added (2)(b).

The 2010 amendment, in (3), inserted "and (e)" and made a related change, and deleted "and petitions for offices described in paragraph (e) of subsection (1) of this section for districts composed of more than one (1) county or parts of more than one (1) county" following "subsection (1) of this section"; in (4), deleted "and petitions for offices described in paragraph (e) of subsection (1) of this section for districts composed of one (1) county or less" following "subsection (1) of this section"; and in (7), deleted "for districts composed of more than one (1) county or parts of more than one (1) county, or the proper circuit clerk for districts composed of one (1) county or less, by 5:00 p.m. on or before the date set in the writ of election as the qualifying deadline" following "State Board of Election Commissioners."

ATTORNEY GENERAL OPINIONS

In an election for school board members in two different districts, if one district has only one qualified candidate and the other has two or more qualified candidates, if one office is unopposed but there is opposition in the other office, an election must be held for both offices and the election for the unopposed office may not be dispensed with in accordance with Section 23-15-359 (9). Sanford, July 15, 2005, A.G. Op. 05-0315.

A political candidate's nickname should not be used on ballots unless the officials in charge of the election determine, consistent with the facts, that the nickname is necessary to identify the candidate to the voters. Coleman, March 23, 2007, A.G. Op. #07-00153, 2007 Miss. AG LEXIS 117.

§ 23-15-361. Names of municipal office candidates to be printed on ballot; filing of petition for municipal office; determination of candidate's qualifications; declaration of nominee in single candidate race.

Cross References — Procedures for contesting the qualifications of a person who has qualified pursuant to the provisions of this section as a candidate for any office elected at a general election, see § 23-15-963.

ATTORNEY GENERAL OPINIONS

Petitions filed by candidates containing only a legally sufficient number of signatures of qualified electors to qualify under proposed (not currently effective) ward lines were not valid at the time they were submitted, and could not be supplemented by additional signatures so that they would contain a legally sufficient number of signatures of qualified electors from the old, and currently still effective, ward lines. Wiggins, May 6, 2005, A.G. Op. 05-0216.

Section 23-15-361 requires that signatures on municipal ward candidate petitions, to be valid, must be those of qualified electors of the ward for the office sought. Wiggins, May 6, 2005, A.G. Op. 05-0216.

If a nominee meets all the qualifications to hold the office for which he was certified as a candidate and for which he was subsequently nominated, a municipal election commission may not lawfully refuse to place his name on a general or special election ballot based on an irregularity in the process of qualifying as a candidate in a party primary. White, Nov. 22, 2006, A.G. Op. 06-0599.

A political candidate's nickname should not be used on ballots unless the officials in charge of the election determine, consistent with the facts, that the nickname is necessary to identify the candidate to the voters. Coleman, March 23, 2007, A.G. Op. #07-00153, 2007 Miss. AG LEXIS 117.

§ 23-15-363. Names of candidates who have not duly withdrawn not omitted from ballot.

ATTORNEY GENERAL OPINIONS

If a nominee withdraws for a legitimate nonpolitical reason as defined in Section 23-15-317 and his sworn affidavit is approved by the State Board of Election Commissioners, the municipal party executive committee would then be required to name a substitute nominee. If a nominee withdraws and no affidavit is submitted and approved, said executive committee would have no authority to name a

substitute nominee. In either case, the nominee has the right to withdraw his candidacy pursuant to Section 23-15-363. Baum, May 20, 2005, A.G. Op. 05-0237.

§ 23-15-365. Write-in candidates; applicability of section to elections conducted under Sections 23-15-974 through 23-15-985.

(1) There shall be left on each ballot one (1) blank space under the title of each office to be voted for, and in the event of the death, resignation, withdrawal or removal of any candidate whose name shall have been printed on the official ballot, the name of the candidate duly substituted in the place of such candidate may be written in such blank space by the voter.

(2) The provisions of subsection (1) of this section shall not apply to elections conducted under the Nonpartisan Judicial Election Act.

SOURCES: Derived from 1972 Code § 25-5-137 [Codes, 1892, § 3653; 1906, § 4160; Hemingway's 1917, § 6794; 1930, § 6233; 1942, § 3262; Laws, 1984, ch. 439, § 2; repealed by Laws, 1986, ch. 495, § 337]; en, Laws, 1986, ch. 495, § 112; Laws, 2011, ch. 509, § 2, eff July 26, 2011 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 26, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2011, ch. 509.

Amendment Notes — The 2011 amendment added (2).

Cross References — Nonpartisan Judicial Election Act, see §§ 23-15-974 through 23-15-985.

JUDICIAL DECISIONS

1. In general.

When, under Miss. Code Ann. § 23-15-365, due to the death of the only candidate who had qualified before the qualifying deadline had passed, no name will be printed on the ballot, and the election will be only by write-in, the election will proceed in the same manner as if no one had qualified to run as a candidate before the qualifying deadline; the Legislature has provided for a write-in election to occur in the event of the death of "any candidate" who has qualified, and although the Legislature has imposed unique qualifications upon judicial candidates, it did not exclude judicial candidates from its provision for a write-in election in the event of a qualified candidate's death. Rayner v. Barbour, 47 So. 3d 128 (Miss. 2010).

Write-in election for a circuit court judge was proper under Miss. Code Ann. § 23-15-365 because the circuit judge passed away after qualifying for the November 2, 2010 election, and Miss. Code Ann. § 9-1-103 permitted the appointee judge to serve for the unexpired term with no requirement of a special election since the circuit judge died fewer than nine months before the expiration of his term; the use of the word "or" in Miss. Code Ann. § 9-1-103 means that an election under Miss. Code Ann. § 23-15-849(1) need not occur if there is so little time in the unexpired term that the appointee may legally serve for the unexpired term. Rayner v. Barbour, 47 So. 3d 128 (Miss. 2010).

ARTICLE 15.

VOTING SYSTEMS.

SUBARTICLE B.

VOTING MACHINES.

§ 23-15-423. Size of voting precincts; minimum number of voting machines to be used.

(1) Voting precincts in which voting machines are to be used may be altered, divided or combined so as to provide that each voting precinct in which the machine is to be used shall contain, as nearly as may be, five hundred (500) voters, and that each voting precinct in which two (2) machines are to be used shall contain, as nearly as may be, one thousand (1,000) voters, and that each voting precinct in which three (3) machines are to be used shall contain, as nearly as may be, one thousand five hundred (1,500) voters; however nothing in this subsection shall prevent any voting precinct from containing a greater number than above.

(2) For each primary or general election, the officials in charge of the election shall utilize at least seventy-five percent (75%) of all the voting machines available to the county or municipality, as the case may be.

SOURCES: Derived from 1972 Code § 23-7-23 [Codes, 1942, § 3316-11; Laws, 1954, ch. 360, § 11; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 129; Laws, 2011, ch. 357, § 1, eff July 28, 2011 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 28, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2011, ch. 357.

Amendment Notes — The 2011 amendment substituted "however nothing in this subsection shall prevent any voting precinct from containing a greater number than above" for "provided that nothing herein shall prevent any voting precinct from containing a greater or lesser number than above if necessary for the convenience of the voters" at the end of (1); and added (2).

SUBARTICLE C.

ELECTRONIC VOTING SYSTEMS.

PART 2.
TRAINING ON USE OF ELECTRONIC VOTING EQUIPMENT

SEC.
23-15-491. Repealed.

§ 23-15-491. Repealed.

Repealed by its own terms, effective July 1, 2009.

§ 23-15-491. [Laws, 2006, ch. 592, § 1, eff June 29, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)]

Editor's Note — Former § 23-15-491 authorized commissioners of election to sponsor and conduct training sessions to educate qualified electors regarding the operation of electronic voting systems.

SUBARTICLE D.

OPTICAL MARK READING EQUIPMENT.

SEC.
23-15-513. Preparation and delivery of necessary forms and supplies; minimum number of ballots to be printed.
23-15-523. Counting vote.

§ 23-15-513. Preparation and delivery of necessary forms and supplies; minimum number of ballots to be printed.

(1) The official ballots, sample ballots and other necessary forms and supplies of the forms and description required by this chapter or required for the conduct of elections with an electronic voting system shall be prepared and furnished by the same official, in the same manner and time, and delivered to the same officials as provided by law with respect to paper ballots that are to be counted manually.

(2) For each primary or general election the number of official ballots that shall be printed shall be a number that is equal to not less than seventy-five percent (75%) of the registered voters eligible to vote in the election.

SOURCES: Derived from 1972 Code § 23-7-513 [Laws, 1984, ch. 509, § 7; repealed by Laws, 1986, ch. 495, § 340]; en, Laws, 1986, ch. 495, § 163; Laws, 2011, ch. 357, § 2, eff July 28, 2011 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 28, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2011, ch. 357.

Amendment Notes — The 2011 amendment added (2).

§ 23-15-523. Counting vote.

(1) All proceedings at the counting center shall be under the direction of the commissioners of elections or officials in charge of the election, and shall be conducted under the observations of the public, but no persons except those authorized for the purpose shall touch any ballot. All persons who are engaged in processing and counting of the ballots shall be deputized in writing and take oath that they will faithfully perform their assigned duties.

(2) The commissioners of elections or the officials in charge of the election shall appoint qualified electors who have received the training required by subsection (11) of this section to serve as judges on the "resolution board." An odd number of not less than three (3) members shall be appointed to the resolution board. The members of the board shall take the oath provided in Section 268, Mississippi Constitution of 1890. All ballots that have been rejected by the OMR tabulating equipment and that are damaged or defective, blank or overvoted will be reviewed by said board. Commissioners of election, candidates who are on the ballot at the election and the parents, siblings or children of such a candidate shall not be appointed to the resolution board. If the election is not a primary election, members of the party executive committees shall not be appointed to the resolution board unless members of all of the party executive committees who have a candidate on the ballot are appointed to the resolution board.

(3)(a) If any ballot is damaged or defective so that it cannot be properly counted by the OMR tabulating equipment, the ballot will be deposited in an envelope provided for that purpose marked "RESOLUTION BOARD." All such ballots shall be carefully handled so as to avoid altering, removing or adding any mark on the ballot.

(b) The commissioners of election or the officials in charge of the election shall have the judges on the resolution board manually count any damaged or defective ballots, who shall determine the intent of the voter and record the vote consistent with this determination.

(c) As an alternative to the procedure provided for in paragraph (b) of this subsection, the resolution board may be instructed by the officials in charge of the election to prepare a duplicate to the damaged or defective ballot in the following manner:

(i) The resolution board shall prepare a duplicate to the original damaged or defective ballot marked identically to the original.

(ii) The resolution board shall mark the first original they examine as "Original #1" and the duplicate of this original as "Duplicate #1." Subsequent originals and duplicates shall be likewise marked and numbered consecutively so the duplicate of each original can be identified. Duplicate ballots shall be stamped in a different manner from the original ballots so that they may be easily distinguished from the originals.

(iii) The duplicate ballots prepared pursuant to this paragraph shall be counted by the OMR tabulating equipment.

(4) Ballots that have been rejected by the OMR tabulating equipment for appearing to be "blank" shall be examined to verify if they are blank or were marked with a "nondetectable" marking device. If it is determined that the ballot was marked with a nondetectable device, the resolution board may mark over the voter's mark with a detectable marking device.

(5) All ballots that are rejected by the OMR tabulating equipment and which contain overvotes shall be inspected by the resolution board. Regarding those ballots upon which an overvote appears and voter intent cannot be determined by inspection of the resolution board, the officials in charge of the election may use the OMR tabulating equipment in determining the vote in the races which are unaffected by the overvote. All other ballots which are overvoted shall be counted manually following the provisions of this section at the direction of the officials in charge of the election. If for any reason it becomes impracticable to count all or a part of the ballots with the OMR tabulating equipment, the officials in charge may direct that they be counted manually, and voter intent shall be determined by following the provisions of this section. The return printed by the OMR tabulating equipment to which have been added the manually tallied ballots, which shall be duly certified by the officials in charge of the election, shall constitute the official return of each voting precinct. Unofficial and incomplete returns may be released during the count. Upon the completion of the counting, the official returns shall be open to the public.

(6) When the resolution board reviews any OMR ballot in which the voter has failed to fill in the arrow, oval, circle or square for a candidate or a ballot measure in accordance with the ballot instruction, the resolution board shall, if the intent of the voter can be ascertained, count the vote if:

(a) The voter marks the ballot with a "cross" (X) or "checkmark" (√) and the lines that form the mark intersect within or on the line of the arrow, oval, circle or square by the ballot measure or the name of the candidate.

(b) The voter blackens the arrow, oval, circle or square adjacent to the ballot measure or the name of the candidate in pencil or ink and the blackened portion extends beyond the boundaries of the arrow, oval, circle or square.

(c) The voter marks the ballot with a "cross" (X) or "checkmark" (√) and the lines that form the mark intersect adjacent to the ballot measure or the name of the candidate.

(d) The voter underlines the ballot measure or the name of a candidate.

(e) The voter draws a line from the arrow, oval, circle or square to a ballot measure or the name of a candidate.

(f) The voter draws a circle or oval around the ballot measure or the name of the candidate.

(g) The voter draws a circle or oval around the arrow, oval, circle or square adjacent to the ballot measure or the name of the candidate.

(7) The resolution board, when inspecting an OMR ballot which contains or appears to contain one or more overvotes, appears to be damaged or

defective, or is rejected by the OMR tabulating equipment for any reason or cannot be counted by the OMR tabulating equipment, shall make its determination in accordance with the following:

(a) When an elector casts more votes for any office or measure than he or she is entitled to cast at an election, all the elector's votes for that office or measure are invalid and the elector is deemed to have voted for none of them except as provided in paragraph (b) of this subsection. If an elector casts less votes for any office or measure than he or she is entitled to cast at an election, all votes cast by the elector shall be counted but no vote shall be counted more than once.

(b) If an elector casts more than one (1) vote for the same candidate for the same office, the first vote is valid and the remaining votes are invalid.

(c) No write-in vote for a candidate whose name is printed on the ballot shall be regarded as defective due to misspelling a candidate's name, or by abbreviation, addition or omission or use of a wrong initial in the name, as long as the intent of the voter can be ascertained.

(d) In any case where a voter writes in the name of a candidate for President of the United States whose name is printed on the general election ballot, the failure by the voter to write in the name of a candidate for the Office of Vice President of the United States on the general election ballot does not invalidate the elector's vote for the slate of electors for any candidate whose name is written in for the Office of President of the United States.

(e) For any ballot measure in which the words "for" or "against" are printed on a ballot, if the voter shall write the word "for" or the word "against" instead of or in addition to marking the ballot in accordance with the ballot instruction in the space adjacent to the preprinted words "for" or "against," the resolution board shall, in reviewing such ballot, count the vote in accordance with the voter's handwritten preference, unless the voter marks the ballot in the space adjacent to the preprinted words "for" or "against" contrary to the handwritten preference, in which case no vote shall be recorded for such ballot in regard to the ballot measure.

(f) For any ballot measure in which the words "yes" or "no" are printed on a ballot, if the voter shall write the word "yes" or the word "no" instead of or in addition to marking the ballot in accordance with the ballot instructions in the space adjacent to the preprinted words "yes" or "no," the resolution board shall, in reviewing such ballot, count the vote in accordance with the voter's handwritten preference, unless the voter marks the ballot in the space adjacent to the preprinted words "yes" or "no" contrary to the handwritten preference, in which case no vote shall be recorded for such ballot in regard to the ballot measure.

(8) OMR tabulating equipment shall be programmed, calibrated, adjusted and set up to reject ballot cards that appear to be damaged or defective. Any switch, lever or feature on OMR tabulating equipment that enables or permits the OMR tabulating equipment to override the rejection of damaged or defective ballot cards so that such cards will not be reviewed by the resolution board, shall not be utilized.

(9) Ballots shall be manually counted by the resolution board only when the ballots are:

(a) Properly before the resolution board due to being rejected by the OMR tabulating equipment because the ballots appear to be damaged or defective or are rejected by the OMR equipment for any other reason; or

(b) Properly before the resolution board due to a malfunction in the OMR tabulating equipment.

(10) The resolution board shall make and keep a record regarding the handling and counting of all ballots inspected under this section.

(11) Qualified electors who are appointed to serve as members of the resolution board shall be required to have the training required for election managers pursuant to Section 23-15-239.

SOURCES: Derived from 1972 Code § 23-7-523 [Laws, 1984, ch. 509, § 12; repealed by Laws, 1986, ch. 495, § 340]; en, Laws, 1986, ch. 495, § 168; Laws, 2002, ch. 529, § 1; Laws, 2008, ch. 528, § 7; Laws, 2009, ch. 490, § 1, eff July 21, 2009 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

By letter dated July 21, 2009, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2009, ch. 490, § 1.

Amendment Notes — The 2008 amendment added the last two sentences of (2).

The 2009 amendment, inserted "who have received the training required by subsection (11) of this section" in (2); and added (11).

Subarticle E.

Direct recording electronic voting equipment (DRE).

Sec.

§ 23-15-531.4. Duties of official in charge of election in regard to use of DREs; circuit clerk to be custodian of DRE units; testing of DRE units prior to election.

(1) The officials in charge of the election of each county or municipality shall:

(a) Cause the proper number of DRE units to be delivered;

(b) Cause the proper ballot design and style to be programmed for each DRE unit which is to be used in any precinct within the county or municipality;

(c) Cause each DRE unit to be placed in proper order for voting;

(d) Examine each unit before it is sent to a polling place;

(e) Verify that each registering mechanism is set at zero; and

(f) Properly secure each unit so that the counting machinery cannot be operated until later authorized.

(2) The circuit clerk shall be the custodian of the DRE units acquired by the county.

(3) The officials in charge of the election shall be responsible for the preparation of the units to be used in the county or municipality at the primaries and other elections in the county or municipality.

(4)(a) On or before the third day preceding any election, except runoff elections, the officials in charge of the election shall have each DRE unit tested to ascertain that it will correctly count the votes cast for all offices and on all questions in a manner that the Secretary of State may prescribe by rule or regulation.

(b) On or before the third day preceding any runoff election, the officials in charge of the election shall test a number of DRE units at random to ascertain that the units will correctly count the votes cast for all offices. If the total number of DRE units in the county is thirty (30) units or less, all of the units shall be tested. If the total number of DRE units in the county is more than thirty (30) but not more than one hundred (100), then at least one-half (½) of the units shall be tested at random. If there are more than one hundred (100) DRE units in the county, the officials in charge of the election shall test at least fifteen percent (15%) of the units at random. In no event shall the officials in charge of the election test less than one (1) DRE unit per precinct. All memory cards to be used in the runoff shall be tested. Public notice of the time and place of the test shall be made at least five (5) days prior thereto. Representatives of candidates, political parties, news media and the public shall be permitted to observe such tests.

(5) In every primary or general election, the officials in charge of the election shall furnish, at the expense of the county or municipality, all ballots, forms of certificates and other papers and supplies required under this subarticle which are not furnished by the Secretary of State, all of which shall be in the form and according to any specifications prescribed from time to time by the Secretary of State.

SOURCES: Laws, 2005, ch. 534, § 5; Laws, 2011, ch. 357, § 3, eff July 28, 2011 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 28, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2011, ch. 357.

Amendment Notes — The 2011 amendment, in (1), added (a), and redesignated the remaining paragraphs accordingly.

§ 23-15-531.6. Minimum number of machines to be used; officials to ensure delivery of proper DRE units to polling places at least one hour before polls open; each unit to be thoroughly tested, inspected and sealed prior to delivery to polling place; protection against molestation of or injury to DRE units; preparation of DRE units for voting.

(1) For each primary or general election, the officials in charge of the election shall utilize at least seventy-five percent (75%) of all the DRE units that are available to the county or municipality, as the case may be.

(2) The officials in charge of the election shall ensure the delivery of the proper DRE units to the polling places of the respective precincts at least one (1) hour before the time for opening the polls at each election and shall cause each unit to be set up in the proper manner for use in voting.

(3) The officials in charge of the election shall require that each DRE unit be thoroughly tested, inspected and sealed prior to the delivery of each DRE unit to the polling place. Prior to opening the polls each day on which the units will be used in an election, the manager shall break the seal on each unit, turn on each unit, certify that each unit is operating properly and is set to zero, and print a zero tape certifying that each unit is set to zero and shall keep or record such certification on each unit.

(4) The officials in charge of the election and poll managers shall provide ample protection against molestation of and injury to the DRE units, and, for that purpose, the officials in charge of the election and poll managers may call upon any law enforcement officer to furnish any assistance that may be necessary. It shall be the duty of any law enforcement officer to furnish assistance when so requested by the officials in charge of the election or poll manager.

(5) The officials in charge of the election, in conjunction with the governing authorities, shall, at least one (1) hour prior to the opening of the polls:

(a) Provide sufficient lighting to enable electors to read the ballot and which shall be suitable for the use of the poll managers in examining the booth and conducting their responsibilities;

(b) Provide directions for voting on the DRE units which shall be prominently posted within each voting booth and at least two (2) sample ballots for the primary or general election which shall be prominently posted outside the enclosed space within the polling place;

(c) Ensure that each DRE unit's tabulating mechanism is secure throughout the day during the primary or general election; and

(d) Provide such other materials and supplies as may be necessary or required by law.

SOURCES: Laws, 2005, ch. 534, § 7; Laws, 2011, ch. 357, § 4, eff July 28, 2011 (the date the United States Attorney General interposed no objection

under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 28, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2011, ch. 357.

Amendment Notes — The 2011 amendment added (1); and redisgnated former (1) through (4) as (2) through (5).

§ 23-15-531.7. Demonstration on use of DREs.

ATTORNEY GENERAL OPINIONS

Individual county election commissioners are entitled to per diem compensation pursuant to Section 23-15-153 for conducting demonstrations of Diebold voting machines. Robinson, Feb. 24, 2006, A.G. Op. 06-0065

A county election commission as a whole may determine that less than a quorum of commissioners is needed to conduct the required demonstrations of DRE machines without the necessity of an order from the county board of supervisors. Wileman, May 26, 2006, A.G. Op. 06-0196.

ARTICLE 17.

CONDUCT OF ELECTIONS.

SUBARTICLE A.

GENERAL PROVISIONS.

§ 23-15-541. Hours polls to be open; designation and duties of initialing manager and alternate initialing manager; curbside voting authorized for certain individuals; procedure.

(1) At all elections, the polls shall be opened at seven o'clock in the morning and be kept open until seven o'clock in the evening and no longer. Upon the opening of the polls, and not before, the managers of the election shall designate two (2) of their number, other than the manager theretofore designated to receive the blank ballots, who shall thereupon be known respectively as the initialing manager and the alternate initialing manager.

The alternate initialing manager, in the absence of the initialing manager, shall perform all of the duties and undertake all of the responsibilities of the initialing manager. When any person entitled to vote shall appear to vote, the managers shall identify the voter by requiring the voter to submit identification as required by Section 23-15-563, and then the voter shall sign his name in a receipt book or booklet provided for that purpose and to be used at that election only and said receipt book or booklet shall be used in lieu of the list of voters who have voted formerly made by the managers or clerks; whereupon and not before, the initialing manager or, in his absence, the alternate initialing manager shall endorse his initials on the back of an official blank ballot, prepared in accordance with law, and at such place on the back of the ballot that the initials may be seen after the ballot has been marked and folded, and when so endorsed he shall deliver it to the voter, which ballot the voter shall mark in the manner provided by law, which when done the voter shall deliver the ballot to the initialing manager or, in his absence, to the alternate initialing manager, in the presence of the others, and the manager shall see that the ballot so delivered bears on the back thereof the genuine initials of the initialing manager, or alternate initialing manager, and if so, but not otherwise, the ballot shall be put into the ballot box; and when so done one (1) of the managers or a duly appointed clerk shall make the proper entry on the pollbook. If the voter is unable to write his name on the receipt book, a manager or clerk shall note on the back of the ballot that it was receipted for by his assistance.

(2)(a) A poll manager shall be authorized to allow a physically disabled person to vote curbside during the hours in which the polls are open as described in this section.

Where the managers of an election, exercising their sound discretion, determine that a physically disabled person has arrived at the polls in a motor vehicle to vote, two (2) or more managers shall carry the pollbook, the receipt book, and a ballot or voting device to the motor vehicle, and after determining whether the disabled person is a qualified elector as provided by law, shall allow the disabled elector to cast his or her ballot in secret. After the disabled elector casts his or her ballot, the managers shall mark the pollbook "voted" by the elector's name in the pollbook.

(b) If the ballot that is provided to the disabled elector is a paper ballot, the initialing manager shall initial the ballot as provided by law, and the disabled elector, after marking his or her ballot shall fold the ballot or place it in the ballot sleeve. The initialing manager or alternate initialing manager shall determine whether the initials on the ballot are genuine, and upon a determination that the initials are genuine, mark "voted" by the elector's name. The initialing manager or alternate initialing manager shall without delay place the ballot in the ballot box.

(c) If, while a voter is voting by curbside, there are less than three (3) managers immediately present within the polling place conducting an election or a political party primary, all voting at the polls shall stop until the managers conducting the curbside voting procedure return so that there are

at least three (3) poll managers immediately present within the polling place to conduct the election or party primary at all times, and until a minimum of three (3) managers are present, the remaining poll manager or managers shall ensure the security of the ballot box, the voting devices, and any ballots and election materials.

SOURCES: Derived from 1972 Code § 23-3-13 [(Codes, 1942, § 3164; Laws, 1935, ch. 19; Laws, 1960, ch. 448) and § 23-5-147 (Codes, Hutchinson's 1848, ch. 7, art 5 (6); 1857, ch. 4, art 12; 1871, §§ 370, 371; 1880, § 136; 1892, § 3648; 1906, § 4155; Hemingway's 1917, § 6789; 1930, § 6238; 1942, § 3267; Laws, 1916, ch. 230; Laws, 1960, ch. 451; Laws, 1964, ch. 511, § 1) repealed by Laws, 1986, ch. 495, §§ 333, 335]; en, Laws, 1986, ch. 495, § 170; Laws, 1993, ch. 528, § 4; Laws, 2008, ch. 528, § 8; Laws, 2012, ch. 526, § 5, eff August 5, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965).

Editor's Note — On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

The effective date of the bill that amended this section, Chapter 526, Laws of 2012 (House Bill No. 921), is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was submitted to the United States Attorney General under Section 5, the United States Supreme Court, in the case of Shelby County v. Holder (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the Shelby County decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. Chapter 526 was submitted to the United States Attorney General before the Shelby County decision was rendered. In a letter dated August 5, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 526 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 526, so Chapter 526 became effective on the date of the response letter from the United States Attorney General, August 5, 2013.

Amendment Notes — The 2008 amendment added (2).

The 2012 amendment rewrote the third sentence of (1).

§ 23-15-549. Assistance to voter.

JUDICIAL DECISIONS

4. Improper assistance and voter dilution.
5. Relation to other laws.

4. Improper assistance and voter dilution.

Government properly established, for purposes of Fed. R. Civ. P. 52, that a political party executive committee and its chairman violated § 2 of the Voting Rights Act, 42 U.S.C.S. § 1973, by intentionally diluting the voting power of white members of the party by obtaining large numbers of defective absentee ballots from black voters, facilitating improper counting of absentee ballots, and permitting improper assistance of black voters,

contrary to the requirements of Miss. Code Ann. §§ 23-15-263, 23-15-715, and 23-15-549. United States v. Brown, 561 F.3d 420 (5th Cir. 2009).

5. Relation to other laws.

Black chairman of a county political party executive committee was guilty of racial discrimination under § 2 of the Voting Rights Act because, inter alia, he instructed black poll workers and other unidentified black individuals to render unsolicited and otherwise improper "assistance" to black voters at a number of polling places in violation of Miss. Code Ann. § 23-15-549 for the purpose of diluting the white vote. United States v. Brown, 494 F. Supp. 2d 440 (S.D. Miss. June 29, 2007), affirmed by 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

§ 23-15-555. Penalty for unlawfully showing mark on ballot or making false statement as to inability to mark ballot.

JUDICIAL DECISIONS

2. Relation to other laws.

Black chairman of a county political party executive committee was guilty of racial discrimination under § 2 of the Voting Rights Act because, inter alia, he encouraged party workers to mark absentee ballots for black voters in violation of Miss. Code Ann. § 23-15-555 with the intention of diluting the white vote. United States v. Brown, 494 F. Supp. 2d 440 (S.D. Miss. June 29, 2007), affirmed by 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

§ 23-15-563. Qualified elector required to provide Identification before voting; kinds of identification; voting by affidavit ballot.

(1) Each person who shall appear to vote in person at a polling place or the registrar's office shall be required to identify himself or herself to an election manager or the registrar by presenting current and valid photo identification before such person shall be allowed to vote.

(2) The identification required by subsection (1) of this section shall include, but not be limited to, the following:

(a) A current and valid Mississippi driver's license;

(b) A current and valid identification card issued by a branch, department, agency or entity of the State of Mississippi;

(c) A current and valid United States passport;

(d) A current and valid employee identification card containing a photograph of the elector and issued by any branch, department, agency or entity of the United States government, the State of Mississippi, or any county, municipality, board, authority or other entity of this state;

(e) A current and valid Mississippi license to carry a pistol or revolver;

(f) A valid tribal identification card containing a photograph of the elector;

(g) A current and valid United States military identification card;

(h) A current and valid student identification card, containing a photograph of the elector, issued by any accredited college, university or community or junior college in the State of Mississippi; and

(i) An official Mississippi voter identification card containing a photograph of the elector.

(3)(a) A person who appears to vote in person at a polling place and does not have identification as required by this section may vote by affidavit ballot. The affidavit ballot shall then be counted if the person shall present acceptable photo identification to the registrar within five (5) days.

(b) An elector who has a religious objection to being photographed may vote by affidavit ballot, and the elector, within five (5) days after the election, shall execute an affidavit in the registrar's office affirming that the exemption applies.

(4) Any person who utilizes the provisions of this section to intimidate a voter, or to prevent from voting a person who is otherwise qualified to vote shall, upon conviction, be sentenced to pay a fine of not less than Five Thousand Dollars ($5,000.00), or by imprisonment for not less than one (1) year nor more than five (5) years, or both.

(5) The intentional failure of an election official to require a voter to present identification as required by this section shall be considered corrupt conduct under Section 97-13-19 and shall be reported to the Secretary of State and the Attorney General.

SOURCES: Laws, 2012, ch. 526, § 1, eff August 5, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965).

Editor's Note — The effective date of the bill that amended this section, Chapter 526, Laws of 2012 (House Bill No. 921), is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was submitted to the United States Attorney General under Section 5, the United States Supreme Court, in the case of Shelby County v. Holder (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the Shelby County decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. Chapter 526 was submitted to the United States Attorney General before the Shelby County decision was rendered. In a letter dated August 5, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 526 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 526, so Chapter 526 became effective on the date of the response letter from the United States Attorney General, August 5, 2013.

Subarticle B.

Affidavit Ballots and Challenged Ballots.

§ 23-15-571. Challenge to voter qualifications.

JUDICIAL DECISIONS

1. Enforcement.

On a challenge against defendants, the Mississippi Governor, Secretary of State, and Attorney General, while Miss. Code Ann. § 23-15-575 provided for closed primary elections, there was no party registration and Miss. Code Ann. § 23-15-571's challenge procedure afforded no practical protection; it unconstitutionally infringed on plaintiff Mississippi Democratic Party's First Amendment disassociation right and the Mississippi Legislature had to pass a new primary system by April 1, 2008. Miss. State Democratic Party v. Barbour, 491 F. Supp. 2d 641 (N.D. Miss. 2007), reversed by, vacated by 529 F.3d 538, 2008 U.S. App. LEXIS 11395 (5th Cir. Miss. 2008).

§ 23-15-575. Participation in primary election.

JUDICIAL DECISIONS

1. Constitutionality.
2. Relation to other laws.

1. Constitutionality.

Although plaintiff political party unquestionably pleaded a constitutional injury by alleging that Mississippi's semi-closed primary statute required it to associate with members of the other party during its candidate-selection process, it took no internal steps to limit participation in its primaries to party members and thus could not claim that Miss. Code Ann. § 23-15-575 actually had an unconstitutional effect; this lack of "actual controversy" made the case too remote and abstract an inquiry for the proper exercise of the judicial function under U.S. Const. Art. III. Miss. State Democratic Party v. Barbour, 529 F.3d 538 (5th Cir. 2008).

Miss. Code Ann. § 23-15-575's primary system unconstitutionally infringed on Mississippi political parties' First Amendment right to disassociate non-members from their nomination process. Miss. State Democratic Party v. Barbour, 491 F. Supp. 2d 641 (N.D. Miss. 2007), reversed by, vacated by 529 F.3d 538, 2008 U.S. App. LEXIS 11395 (5th Cir. Miss. 2008).

On a challenge against defendants, the Mississippi Governor, Secretary of State, and Attorney General, while Miss. Code Ann. § 23-15-575 provides for closed primary elections, there was no party registration and Miss. Code Ann. § 23-15-571's challenge procedure afforded no practical protection; it unconstitutionally infringed on plaintiff Mississippi Democratic Party's First Amendment disassociation right and the Mississippi Legislature had to pass a new primary system by April 1, 2008. Miss. State Democratic Party v. Barbour, 491 F. Supp. 2d 641 (N.D. Miss. 2007), reversed by, vacated by 529 F.3d 538, 2008 U.S. App. LEXIS 11395 (5th Cir. Miss. 2008).

2. Relation to other laws.

Black chairman of a county political party executive committee was guilty of racial discrimination under § 2 of the Voting Rights Act because, inter alia, he enforced the party loyalty requirements set forth in Miss. Code Ann. § 23-15-575 in contravention of the state attorney general's express recommendation. United States v. Brown, 494 F. Supp. 2d 440 (S.D. Miss. June 29, 2007), affirmed by 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

§ 23-15-579. Procedure when vote challenged.

JUDICIAL DECISIONS

1. In general.

On a challenge against defendants, the Mississippi Governor, Secretary of State, and Attorney General, while Miss. Code Ann. § 23-15-575 provides for closed primary elections, there was no party registration and the challenge procedure in Miss. Code Ann. § 23-15-571 and Miss. Code Ann. § 23-15-579 afforded no practical protection; it unconstitutionally infringed on plaintiff Mississippi Democratic Party's First Amendment disassociation right and the Mississippi Legislature had to pass a new primary system by April 1, 2008. Miss. State Democratic Party v. Barbour, 491 F. Supp. 2d 641 (N.D. Miss. 2007), reversed by, vacated by 529 F.3d 538, 2008 U.S. App. LEXIS 11395 (5th Cir. Miss. 2008).

SUBARTICLE C.

DETERMINING THE RESULTS OF ELECTIONS.

SEC.

§ 23-15-593. Irregularities in ballot box.

JUDICIAL DECISIONS

2. Revote.

In a contested election for state representative, the trial court improperly issued a writ of mandamus requiring the election commission to certify the results and issued a writ of prohibition cancelling a re-vote as the commission's decision to schedule a re-vote based on voting irregularities was discretionary and not a ministerial act; and scheduling a re-vote was within its authority under Miss. Code Ann. § 23-15-593 where voters were not allowed to vote because they were given the wrong ballots and incorrect poll books were used, thereby precluding an interpretation of the will of the voters. In re Election for House of Representatives Dist. 71, 987 So. 2d 917 (Miss. 2008).

§ 23-15-597. Canvas of returns and announcement of results by executive committee.

(1) The county executive committee shall meet on the first or second day after each primary election, shall receive and canvass the returns which must be made within the time fixed by law for returns of general elections and declare the result, and announce the name of the nominees for county and county district offices and the names of those candidates to be submitted to the second primary. The vote for state, state district offices and legislative offices shall be tabulated by precincts and certified to and returned to the state executive committee, such returns to be mailed by registered letter or any safe mode of transmission within thirty-six (36) hours after the returns are canvassed and the result ascertained. The state executive committee shall

meet a week from the day following the first primary election held for state, state district offices and legislative offices, and shall proceed to canvass the returns and to declare the result, and announce the names of those nominated for the different offices in the first primary and the names of those candidates whose names are to be submitted to the second primary election. The state executive committee shall also meet a week from the day on which the second primary election was held and receive and canvass the returns for state and district offices, if any, and legislative offices, if any, voted on in such second primary. An exact and full duplicate of all tabulations by precincts as certified under this section shall be filed with the circuit clerk of the county who shall safely preserve the same in his office.

(2)(a) If it is eligible under Section 23-15-266, the county executive committee may enter into a written agreement with the circuit clerk or the county election commission authorizing the circuit clerk or the county election commission to perform any of the duties required of the county executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chairman of the county executive committee and the circuit clerk or the chairman of the county election commission, as appropriate. The county executive committee shall notify the state executive committee and the Secretary of State of the existence of such agreement.

(b) If it is eligible under Section 23-15-266, the municipal executive committee may enter into a written agreement with the municipal clerk or the municipal election commission authorizing the municipal clerk or the municipal election commission to perform any of the duties required of the municipal executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chairman of the municipal executive committee and the municipal clerk or the chairman of the municipal election commission, as appropriate. The municipal executive committee shall notify the state executive committee and the Secretary of State of the existence of such agreement.

SOURCES: Derived from 1942 Code § 3142 [Codes, 1906, § 3705; Hemingway's 1917, § 6397; 1930, § 5895; repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 190; Laws, 2001, ch. 523, § 7; Laws, 2010, ch. 320, § 3, eff July 15, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 320, § 3.

Amendment Notes — The 2010 amendment in (1), in the first sentence, deleted "and legislative offices for districts containing one (1) county or less" following "county district offices," and in the second, third and fifth sentences, deleted "for districts containing more than one (1) county or parts of more than one (1) county" following "legislative offices"; and made minor stylistic changes.

§ 23-15-601. Canvas of returns and declaration of results by commissioners of election; determination of tie vote.

JUDICIAL DECISIONS

1. In general.

In a contested election for state representative, the trial court improperly issued a writ of mandamus requiring the election commission to certify the results and issued a writ of prohibition cancelling a re-vote as the commission's decision to schedule a re-vote based on voting irregularities was discretionary and not a ministerial act; and scheduling a re-vote was within its authority under Miss. Code Ann. § 23-15-593 where voters were not allowed to vote because they were given the wrong ballots and incorrect poll books were used, thereby precluding an interpretation of the will of the voters. In re Election for House of Representatives Dist. 71, 987 So. 2d 917 (Miss. 2008).

ATTORNEY GENERAL OPINIONS

So long as members of a county election commission had no knowledge of or were not a participant in any illegal or criminal activities associated with a general election, they will not be liable civilly or criminally for proceeding with their duty to complete the canvass and to certify the election result in accordance with Section 23-15-601 and transmitting the result to the secretary of state in accordance with Section 23-15-603. Bankhead, Nov. 22, 2006, A.G. Op. 06-0612.

§ 23-15-603. Delivery of returns to Secretary of State.

JUDICIAL DECISIONS

1. In general.

In a contested election for state representative, the trial court improperly issued a writ of mandamus requiring the election commission to certify the results and issued a writ of prohibition cancelling a re-vote as the commission's decision to schedule a re-vote based on voting irregularities was discretionary and not a ministerial act; and scheduling a re-vote was within its authority under Miss. Code Ann. § 23-15-593 where voters were not allowed to vote because they were given the wrong ballots and incorrect poll books were used, thereby precluding an interpretation of the will of the voters. In re Election for House of Representatives Dist. 71, 987 So. 2d 917 (Miss. 2008).

ATTORNEY GENERAL OPINIONS

So long as members of a county election commission had no knowledge of or were not a participant in any illegal or criminal activities associated with a general election, they will not be liable civilly or criminally for proceeding with their duty to complete the canvass and to certify the election result in accordance with Section 23-15-601 and transmitting the result to the secretary of state in accordance with Section 23-15-603. Bankhead, Nov. 22, 2006, A.G. Op. 06-0612.

§ 23-15-611. Determination of municipal elections; show cause order may be issued for failure to transmit statement certifying names of persons elected.

(1) In municipal elections, managers of elections shall, immediately upon the closing of the polls, count the ballots and ascertain the number of votes cast in each voting precinct for each of the candidates or ballot measures and make a return thereof to the municipal election commissioners. On the day following the election, the election commissioners shall canvass the returns so received from all voting precincts and shall, within five (5) days after such election, deliver to each person receiving the highest number of votes a certificate of election. If it shall appear that any two (2) or more of the candidates receiving the highest number of votes shall have received an equal number of votes, the election shall be decided by lot, fairly and publicly drawn by the election commissioners with the aid of two (2) or more qualified electors of the municipality.

(2)(a) Within five (5) days after any election, the municipal election commissioners shall transmit a statement to the Secretary of State certifying the name or names of the person or persons elected thereat, and such person or persons shall be issued commissions by the Governor. The statement shall also include vote totals for each candidate for each office and vote totals for and against ballot measures, if any, including the vote totals for each candidate a ballot measure in each precinct in the municipality.

(b) The statements required by this subsection shall contain a certification, signed and dated by a majority of the municipal election commissioners, which shall read as follows:

"We, the undersigned municipal election commissioners, do hereby certify that this statement contains the official vote for the election reflected therein."

(c) The statements required by this subsection shall be transmitted to the Secretary of State on such forms and by such methods as may be required by rules and regulations promulgated by the Secretary of State.

(d) If the statement certifying the names of the persons elected is not transmitted to the Secretary of State as required by this subsection, the Secretary of State may issue a show cause order directing the municipal election commissioners to provide to the Secretary of State written response containing the reasons for their failure to transmit the statement. The municipal election commissioners shall file their response to the show cause order with the Secretary of State within five (5) working days after the issuance of the show cause order. If the statement certifying the names of the persons elected is not transmitted to the Secretary of State within five (5) working days after the issuance of the show cause order, the Secretary of State may petition a court of competent jurisdiction to compel the municipal election commissioners to comply with this subsection. If the statement certifying the names of the persons elected is received by the Secretary of State within five (5) days after the issuance of the show cause order, a response to the show cause order shall not be required.

SOURCES: Derived from 1972 Code § 21-11-13 [Codes, 1892, § 3032; 1906, § 3437; Hemingway's 1917, § 5997; 1930, § 2599; 1942, § 3374-65; Laws, 1950, ch. 491, § 65; repealed by Laws, 1986, ch. 495, § 329]; en, Laws, 1986, ch. 495, § 197; Laws, 2002, ch. 534, § 7; Laws, 2010, ch. 400, § 1, eff July 15, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 400, § 1.

Amendment Notes — The 2010 amendment designated the first paragraph in (2) as (2)(a); redesignated (3) and (4) as (2)(b) and (2)(c) respectively, and in the latter, substituted "subsection" for "section"; and added (2)(d).

ARTICLE 19.

ABSENTEE BALLOTS.

SUBARTICLE A.

ABSENTEE BALLOTING PROCEDURES LAW.

SEC.

§ 23-15-625. Duties of registrar relating to the provision and disbursement of absentee voting applications; request for application by person other than elector seeking to vote by absentee ballot; solicitation of absentee ballot applications for persons staying in skilled nursing facility prohibited; exceptions; maintenance of list of absentee voters; public access to list; placement of absentee ballots in ballot boxes; authority to mail applications to qualified electors; use of Statewide Election Management System.

(1) The registrar shall be responsible for providing applications for absentee voting as provided in this section. At least sixty (60) days prior to any election in which absentee voting is provided for by law, the registrar shall provide a sufficient number of applications. In the event a special election is called and set at a date which makes it impractical or impossible to prepare applications for absent elector's ballot sixty (60) days prior to the election, the registrar shall provide applications as soon as practicable after the election is called. The registrar shall fill in the date of the particular election on the application for which the application will be used.

(2) The registrar shall be authorized to disburse applications for absentee ballots to any qualified elector within the county where he serves. Any person who presents to the registrar an oral or written request for an absentee ballot application for a voter entitled to vote absentee by mail, other than the elector who seeks to vote by absentee ballot, shall, in the presence of the registrar, sign the application and print on the application his or her name and address and the name of the elector for whom the application is being requested in the place provided for on the application for that purpose. However, if for any reason such person is unable to write the information required, then the registrar shall write the information on a printed form which has been prescribed by the Secretary of State. The form shall provide a place for such person to place his mark after the form has been filled out by the registrar.

(3) It shall be unlawful for any person to solicit absentee ballot applications or absentee ballots for persons staying in any skilled nursing facility as defined in Section 41-7-173. This prohibition shall not apply to:

(a) A family member of the person staying in the skilled nursing facility; or

(b) A person designated by the person for whom the absentee ballot application or absentee ballot is sought, the registrar or the deputy registrar.

As used in this subsection, "family member" means a spouse, parent, grandparent, sibling, adult child, grandchild or legal guardian.

(4) The registrar in the county wherein a voter is qualified to vote upon receiving the envelope containing the absentee ballots shall keep an accurate list of all persons preparing such ballots, which list shall be kept in a conspicuous place accessible to the public near the entrance to his office. The registrar shall also furnish to each precinct manager a list of the names of all persons in each respective precinct voting absentee ballots to be posted in a

conspicuous place at the polling place for public notice. The application on file with the registrar and the envelopes containing the ballots shall be kept by the registrar and deposited in the proper precinct ballot boxes before such boxes are delivered to the election commissioners or managers. At the time such boxes are delivered to the election commissioners or managers, the registrar shall also turn over a list of all such persons who have voted and whose ballots are in the box.

(5) The registrar shall also be authorized to mail one (1) application to any qualified elector of the county for use in a particular election.

(6) The registrar shall process all applications for absentee ballots by using the Statewide Election Management System. The registrar shall account for all absentee ballots delivered to and received from qualified voters by processing such ballots using the Statewide Election Management System.

SOURCES: Derived from 1972 Code § 23-9-405 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 405; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 200; Laws, 1993, ch. 528, § 5; Laws, 1999, ch. 420, § 1; Laws, 2006, ch. 574, § 16; Laws, 2008, ch. 528, § 9; Laws, 2012, ch. 471, § 2, eff September 6, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

By letter dated September 6, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 471.

Amendment Notes — The 2008 amendment added (3); and designated the formerly undesignated first through fourth paragraphs as present (1), (2) (4) and (5), respectively.

The 2012 amendment added (6).

§ 23-15-627. Distribution of absentee ballot application by registrar; request for absentee ballot application by certain persons on behalf of an elector; form of application.

The registrar shall be responsible for furnishing an absentee ballot application form to any elector authorized to receive an absentee ballot. Except as otherwise provided in Section 23-15-625, absentee ballot applications shall be furnished to a person only upon the oral or written request of the elector who seeks to vote by absentee ballot; however, the parent, child, spouse, sibling, legal guardian, those empowered with a power of attorney for that elector's affairs or agent of the elector, who is designated in writing and witnessed by a resident of this state who shall write his or her physical address on such designation, may orally request an absentee ballot application on behalf of the elector. The written designation shall be valid for one (1) year after the date of the designation. An absentee ballot application must have the seal of the circuit or municipal clerk affixed to it and be initialed by the registrar or his deputy in order to be utilized to obtain an absentee ballot. A

reproduction of an absentee ballot application shall not be valid unless it is a reproduction provided by the office of the registrar of the jurisdiction in which the election is being held and which contains the seal and initials required by this section. Such application shall be substantially in the following form:

"OFFICIAL APPLICATION FOR ABSENT ELECTOR'S BALLOT

I, _____, duly qualified and registered in the _____ Precinct of the County of _____, and State of Mississippi, coming within the purview of the definition 'ABSENT ELECTOR' will be absent from the county of my residence on election day, or unable to vote in person because (check appropriate reason):

( ) (PRESIDENTIAL APPLICANT ONLY:) I am currently a resident of Mississippi or have moved therefrom within thirty (30) days of the coming presidential election.

( ) I am an enlisted or commissioned member, male or female, of any component of the United States Armed Forces and am a citizen of Mississippi, or spouse or dependent of such member.

( ) I am a member of the Merchant Marine or the American Red Cross and am a citizen of Mississippi or spouse or dependent of such member.

( ) I am a disabled war veteran who is a patient in any hospital and am a citizen of Mississippi or spouse or dependent of such veteran.

( ) I am a civilian attached to and serving outside of the United States with any branch of the Armed Forces or with the Merchant Marine or American Red Cross, and am a citizen of Mississippi or spouse or dependent of such civilian.

( ) I am a citizen of Mississippi temporarily residing outside the territorial limits of the United States and the District of Columbia.

( ) I am a student, teacher or administrator at a college, university, junior or community college, high, junior high, elementary or grade school, whose studies or employment at such institution necessitates my absence from the county of my voting residence or spouse or dependent of such student, teacher or administrator who maintains a common domicile outside the county of my voting residence with such student, teacher or administrator.

( ) I will be outside the county on election day.

( ) I have a temporary or permanent physical disability.

( ) I am sixty-five (65) years of age or older.

( ) I am the parent, spouse or dependent of a person with a temporary or permanent physical disability who is hospitalized outside his county of residence or more than fifty (50) miles away from his residence, and I will be with such person on election day.

( ) I am a member of the congressional delegation, or spouse or dependent of a member of the congressional delegation.

( ) I am required to be at work on election day during the times which the polls will be open.

I hereby make application for an official ballot, or ballots, to be voted by me at the election to be held in _____, on _____.

Mail 'Absent Elector's Ballot' to me at the following address _____ (if eligible to vote by mail).

I realize that I can be fined up to Five Thousand Dollars ($5,000.00) and sentenced up to five (5) years in the Penitentiary for making a false statement in this application and for selling my vote and violating the Mississippi Absentee Voter Law. (This sentence is to be in bold print.)

If you are temporarily or permanently disabled, you are not required to have this application notarized or signed by an official authorized to administer oaths for absentee balloting. You are required to sign this application in the proper place and have a person eighteen (18) years of age or older witness your signature and sign this application in the proper place.

DO NOT SIGN WITHOUT READING. (This sentence is to be in bold print.)

IN WITNESS WHEREOF I have hereunto set my hand and seal this the _____ day of _____, 2_____.

_____

(Signature of absent elector)

SWORN TO AND SUBSCRIBED before me this the _____ day of _____, 2_____.

_____

(Official authorized to administer oaths for absentee balloting.)

TO BE SIGNED BY WITNESS FOR VOTERS TEMPORARILY OR PERMANENTLY DISABLED:

I HEREBY CERTIFY that this application for an absent elector's ballot was signed by the above-named disabled elector in my presence and that I am at least eighteen (18) years of age, this the _____ day of _____, 2_____.

_____

(Signature of witness)

CERTIFICATE OF DELIVERY

I hereby certify that _____ (print name of voter) has requested that I, _____ (print name of person delivering application), deliver to the voter this absentee ballot application.

_____

(Signature of person delivering application)

_____

(Address of person delivering application)"

SOURCES: Derived from 1972 Code § 23-9-407 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 201; Laws, 1986, ch. 495, § 201; Laws, 1993, ch. 528, § 6; Laws, 1999, ch. 420, § 2; Laws, 2000, ch. 592, § 9; Laws, 2008, ch. 528, § 10, eff August 7, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

Amendment Notes — The 2008 amendment, in the introductory paragraph, rewrote the second sentence, and added the third sentence.

JUDICIAL DECISIONS

1. In general.

In a case challenging an order by a circuit court that a special election had to be held for sheriff because there were irregularities with the absentee ballots in the primary election, 103 ballots violated Miss. Code Ann. § 23-15-627 because the blanks where the signatures of the official authorized to administer oaths for absentee balloting were, in fact, blank. The absence of those signatures made those 103 votes illegal, and the incumbent had obtained a majority by only 11 votes, which included the absentee ballots. Thompson v. Jones, 17 So. 3d 524 (Miss. 2008).

§ 23-15-631. Instructions to absent electors; instructions as constituting substantive law.

(1) The registrar shall enclose with each ballot provided to an absent elector separate printed instructions furnished by him containing the following:

(a) All absentee voters, excepting those with temporary or permanent physical disabilities or those who are sixty-five (65) years of age or older, who mark their ballots in the county of the residence shall use the registrar of that county as the witness. The absentee voter shall come to the office of the registrar and neither the registrar nor his deputy shall be required to go out of the registrar's office to serve as an attesting witness.

(b) Upon receipt of the enclosed ballot, you will not mark the ballot except in view or sight of the attesting witness. In the sight or view of the attesting witness, mark the ballot according to instructions.

(c) After marking the ballot, fill out and sign the "ELECTOR'S CERTIFICATE" on back of the envelope so that the signature shall be across the flap of the envelope so as to insure the integrity of the ballot. All absent electors shall have the attesting witness sign the "ATTESTING WITNESS CERTIFICATE" across the flap on back of the envelope. Place necessary postage on the envelope and deposit it in the post office or some government receptacle provided for deposit of mail so that the absent elector's ballot, excepting presidential absentee ballots, will reach the registrar in which your precinct is located not later than 5:00 p.m. on the day preceding the date of the election.

Any notary public, United States postmaster, assistant United States postmaster, United States postal supervisor, clerk in charge of a contract postal station, or any officer having authority to administer an oath or take an acknowledgment may be an attesting witness; provided, however, that in the case of an absent elector who is temporarily or permanently physically disabled, the attesting witness may be any person eighteen (18) years of age or older and such person is not required to have the authority to administer an oath. If a postmaster, assistant postmaster, postal supervisor, or clerk in charge of a contract postal station acts as an attesting witness, his signature on the elector's certificate must be authenticated by the cancellation stamp of their respective post offices. If one or the other officers herein named acts as attesting witness, his signature on the elector's certificate, together with

his title and address, but no seal, shall be required. Any affidavits made by an absent elector who is in the Armed Forces may be executed before a commissioned officer, warrant officer, or noncommissioned officer not lower in grade than sergeant rating or any person authorized to administer oaths.

(d) When the application accompanies the ballot it shall not be returned in the same envelope as the ballot but shall be returned in a separate preaddressed envelope provided by the registrar.

(e) A person who is a candidate for public office may not be an attesting witness for any absentee ballot upon which the person's name appears.

(f) Any voter casting an absentee ballot who declares that he requires assistance to vote by reason of blindness, temporary or permanent physical disability or inability to read or write, shall be entitled to receive assistance in the marking of his absentee ballot and in completing the affidavit on the absentee ballot envelope. The voter may be given assistance by anyone of the voter's choice other than a candidate whose name appears on the absentee ballot being marked, or the voter's employer, or agent of that employer. In order to ensure the integrity of the ballot, any person who provides assistance to an absentee voter shall be required to sign and complete the "Certificate of Person Providing Voter Assistance" on the absentee ballot envelope.

(2) The foregoing instructions required to be provided by the registrar to the elector shall also constitute the substantive law pertaining to the handling of absentee ballots by the elector and registrar.

(3) The Secretary of State shall prepare instructions on how absent voters may comply with the identification requirements of Section 23-15-563.

SOURCES: Derived from 1972 Code § 23-9-409 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, 3403; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 203; Laws, 1987, ch. 499, § 12; Laws, 1999, ch. 420, § 3; Laws, 2000, ch. 592, § 10; Laws, 2006, ch. 574, § 18; Laws, 2012, ch. 526, § 6, eff August 5, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965).

Editor's Note — The effective date of the bill that amended this section, Chapter 526, Laws of 2012 (House Bill No. 921), is 'from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.' However, after the bill was submitted to the United States Attorney General under Section 5, the United States Supreme Court, in the case of Shelby County v. Holder (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the Shelby County decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. Chapter 526 was submitted to the United States Attorney General before the Shelby County decision was rendered. In a letter dated August 5, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 526 and the response from the United States Attorney General technically met the requirements of Section 5 and

fulfilled the condition in the effective date of Chapter 526, so Chapter 526 became effective on the date of the response letter from the United States Attorney General, August 5, 2013.

Amendment Notes — The 2012 amendment added (3).

§ 23-15-633. Signatures of elector and attesting witness across flap of envelope.

On any envelope where the elector's signature and the signature of the attesting witness are required, the signature lines and the signatures shall be across the flap of the envelope to insure the integrity of the ballot and the following shall be printed on the flap on the back of the envelope in bold print and in a distinguishing color: **"YOUR VOTE WILL BE REJECTED AND NOT COUNTED IF THIS ENVELOPE IS NOT SIGNED ACROSS THE FLAP OF THIS ENVELOPE BY YOU AND AN ATTESTING WITNESS."**

SOURCES: Derived from 1972 Code § 23-9-411 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 204; Laws, 2008, ch. 528, § 12, eff August 7, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

Amendment Notes — The 2008 amendment added the language following "integrity of the ballot" at the end.

§ 23-15-635. Form of elector's certificate, attesting witness certification, and voter assistance certificate where county registrar is not attesting witness and voter is not absent voter as defined in the Armed Forces Absentee Voting Law.

(1) The form of the elector's certificate, attesting witness certification and certificate of person providing voter assistance on the back of the envelope used by voters who do not use the registrar of their county of residence as an attesting witness and who are not absent voters as defined in Section 23-15-673, shall be as follows:

"ELECTOR'S CERTIFICATE

STATE OF _____

COUNTY OR PARISH OF _____

I, _____, under penalty of perjury do solemnly swear that this envelope contains the ballot marked by me indicating my choice of the candidates or propositions to be submitted at the election to be held on the _____ day of _____, 2_____, and I hereby authorize the registrar to place this envelope in the ballot box on my behalf, and I further authorize the election managers to open this envelope and place my ballot among the other ballots cast before such ballots are counted, and record my name on the poll list as if I were present in person and voted.

I further swear that I marked the enclosed ballot in secret.

Penalties for vote fraud are up to five (5) years in prison and a fine of up to Five Thousand Dollars ($5,000.00). (Miss. Code. Ann. Section 23-15-753.) Penalties for voter intimidation are up to one year in jail and a fine of up to One Thousand Dollars ($1,000.00). (Miss. Code. Ann. Section 97-13-37.)

_____

(Signature of voter)

CERTIFICATE OF ATTESTING WITNESS

Under penalty of perjury I affirm that the above named voter personally appeared before me, on this the _____ day of _____, 2_____, and is known by me to be the person named, and who, after being duly sworn or having affirmed, subscribed the foregoing oath or affirmation. That the voter exhibited to me his blank ballot; that the ballot was not marked or voted before the voter exhibited the ballot to me; that the voter was not solicited or advised by me to vote for any candidate, question or issue, and that the voter, after marking his ballot, placed it in the envelope, closed and sealed the envelope in my presence, and signed and swore or affirmed the above certificate.

_____ _____

(Attesting witness) (Address)

_____ _____

(Official title) (City and State)

CERTIFICATE OF PERSON PROVIDING VOTER ASSISTANCE

(To be completed only if the voter has received assistance in marking the enclosed ballot.) I, under penalty of perjury, hereby certify that the above-named voter declared to me that he or she is blind, temporarily or permanently physically disabled, or cannot read or write, and that the voter requested that I assist the voter in marking the enclosed absentee ballot. I hereby certify that the ballot preferences on the enclosed ballot are those communicated by the voter to me, and that I have marked the enclosed ballot in accordance with the voter's instructions.

Penalties for vote fraud are up to five (5) years in prison and a fine of up to Five Thousand Dollars ($5,000.00). (Miss. Code. Ann. Section 23-15-753.) Penalties for voter intimidation are up to one (1) year in jail and a fine of up to One Thousand Dollars ($1,000.00). (Miss. Code. Ann. Section 97-13-37.)

_____

Signature of person providing assistance

_____

Printed name of person providing assistance

_____

Address of person providing assistance

_____

Date and time assistance provided

_____

Family relationship to voter (if any)"

(2) The envelope used pursuant to this section shall not contain the form prescribed pursuant to Section 23-15-719 and shall have printed on the flap on the back of the envelope in bold print and in a distinguishing color, the following: **"YOUR VOTE WILL BE REJECTED AND NOT COUNTED IF THIS ENVELOPE IS NOT SIGNED ACROSS THE FLAP OF THIS ENVELOPE BY YOU AND AN ATTESTING WITNESS."**

SOURCES: Derived from 1972 Code § 23-9-19 [(Codes, 1942, § 3196-10; Laws, 1942, ch. 202; Laws, 1954, ch. 359, § 10), repealed by Laws, 1972, ch. 490, § 604] and § 23-9-413 [(Codes, § 3203-403; Laws, 1972, ch. 490, § 403) repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 205; Laws, 1999, ch. 420, § 4; Laws, 2008, ch. 528, § 11; Laws, 2010, ch. 446, § 9, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

Amendment Notes — The 2008 amendment, in (1), added the paragraph regarding penalties for vote fraud, and inserted "under penalty of perjury" in the "Elector's Certificate" and "Certificate of Person Providing Voter Assistance" forms, and added "Under penalty of perjury I affirm that the above named voter" and substituted "and is known" for "the above-named voter, known" in the "Certificate of Attesting Witness" form; and in (2), added the language following "Section 23-15-719."

The 2010 amendment inserted "and who are not absent voters as defined in Section 23-15-673" near the end of the introductory language of (1).

§ 23-15-637. Timely casting of ballots.

Absentee ballots received by mail, except presidential ballots as provided for in Sections 23-15-731 and 23-15-733 and except as otherwise provided by Section 23-15-699, must be received by the registrar by 5:00 p.m. on the date preceding the election; any received after such time shall be handled as provided in Section 23-15-647 and shall not be counted. All ballots cast by the absent elector appearing in person in the office of the registrar shall be cast not later than 12:00 noon on the Saturday immediately preceding elections held on Tuesday, the Thursday immediately preceding elections held on Saturday, or the second day immediately preceding the date of elections held on other days. The registrar shall deposit all absentee ballots which have been timely cast in the ballot boxes upon receipt.

SOURCES: Derived from 1972 Code § 23-9-415 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 206; Laws, 2012, ch. 465, § 4, eff September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated September 17, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 465.

Amendment Notes — The 2012 amendment substituted "except" for "excluding" preceding "presidential ballots as provided for in Sections 23-15-731 and 23-15-733" and inserted "and except as otherwise provided by Section 23-15-699" thereafter in the first sentence.

§ 23-15-639. Examination of absentee ballots at close of polls; counting of ballots.

(1) In elections in which direct recording electronic voting systems are not utilized, the examination and counting of absentee ballots shall be conducted as follows:

(a) At the close of the regular balloting and at the close of the polls, the election managers of each voting precinct shall first take the envelopes containing the absentee ballots of such electors from the box, and the name, address and precinct inscribed on each envelope shall be announced by the election managers.

(b) The signature on the application shall then be compared with the signature on the back of the envelope. If it corresponds and the affidavit, if one is required, is sufficient and the election managers find that the applicant is a registered and qualified voter or otherwise qualified to vote, and that he has not appeared in person and voted at the election, the envelope shall then be opened and the ballot removed from the envelope, without its being unfolded, or permitted to be unfolded or examined.

(c) Having observed and found the ballot to be regular as far as can be observed from its official endorsement, the election managers shall deposit it in the ballot box with the other ballots before counting any ballots and enter the voter's name in the receipt book provided for that purpose and mark "VOTED" in the pollbook or poll list as if he had been present and voted in person. If voting machines are used, all absentee ballots shall be placed in the ballot box before any ballots are counted, and the election managers in each precinct shall immediately count such absentee ballots and add them to the votes cast in the voting machine or device.

(2) In elections in which direct recording electronic voting systems are utilized, the examination and counting of absentee ballots shall be conducted as follows:

(a) At the close of the regular balloting and at the close of the polls, the election managers of each voting precinct shall first take the envelopes containing the absentee ballots of such electors from the box, and the name, address and precinct inscribed on each envelope shall be announced by the election managers.

(b) The signature on the application shall then be compared with the signature on the back of the envelope. If it corresponds and the affidavit, if one is required, is sufficient and the election managers find that the applicant is a registered and qualified voter or otherwise qualified to vote,

and that he has not appeared in person and voted at the election, the unopened envelope shall be marked "ACCEPTED" and the election managers shall enter the voter's name in the receipt book provided for that purpose and mark "VOTED" in the pollbook or poll list as if he had been present and voted in person.

(c) All absentee ballot envelopes shall then be placed in the secure ballot transfer case and delivered to the officials in charge of conducting the election at the central tabulation point of the county. The official in charge of the election shall open the envelopes marked "ACCEPTED" and remove the ballot from the envelope.

(d) Having observed the ballot to be regular as far as can be observed from its official endorsement, the absentee ballot shall be processed through the central optical scanner. The scanned totals shall then be combined with the direct recording electronic voting system totals for the unofficial vote count.

When there is a conflict between an electronic voting system and a paper record, then there is a rebuttable presumption that the paper record is correct.

(3) The election managers shall also take such action as may be prescribed by the Secretary of State to ensure compliance with the identification requirements of Section 23-15-563.

SOURCES: Derived from 1972 Code § 23-9-417 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 207; Laws, 1993, ch. 528, § 9; Laws, 2006, ch. 574, § 19; Laws, 2012, ch. 526, § 7, eff August 5, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965).

Editor's Note — The effective date of the bill that amended this section, Chapter 526, Laws of 2012 (House Bill No. 921), is 'from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.' However, after the bill was submitted to the United States Attorney General under Section 5, the United States Supreme Court, in the case of Shelby County v. Holder (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the Shelby County decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. Chapter 526 was submitted to the United States Attorney General before the Shelby County decision was rendered. In a letter dated August 5, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 526 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 526, so Chapter 526 became effective on the date of the response letter from the United States Attorney General, August 5, 2013.

Amendment Notes — The 2012 amendment added (3).

§ 23-15-641. Grounds for rejection of ballots; procedure.

JUDICIAL DECISIONS

2. Relation to other laws.

Black chairman of a county political party executive committee was guilty of racial discrimination under § 2 of the Voting Rights Act because, inter alia, he directed poll workers to count absentee votes from black voters who were not eligible to vote absentee or had already voted at the polls instead of rejecting their absentee ballots as required by Miss. Code Ann. § 23-15-641. United States v. Brown, 494 F. Supp. 2d 440 (S.D. Miss. June 29, 2007), affirmed by 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

§ 23-15-657. Requests for absentee ballots by telephone.

The registrar is authorized to accept requests for absentee ballots by telephone. When a telephone request that an absentee ballot application be mailed by the registrar to an elector is made, the registrar shall ascertain the name and complete address of the person making the telephone request and shall print upon the absentee ballot application the name and complete address of the requestor and the relation of such person to the voter if requested by a person other than the voter and the date such request was made. Such requests shall be processed through the Statewide Election Management System.

SOURCES: Laws, 1993, ch. 528, § 12; Laws, 2012, ch. 471, § 3, eff September 6, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated September 6, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 471.

Amendment Notes — The 2012 amendment added the last sentence.

SUBARTICLE B.

ARMED SERVICES ABSENTEE VOTING LAW.

SEC.

§ 23-15-673. Definitions.

(1) For the purposes of this subarticle, the term "absent voter" shall mean and include the following persons if they are absent from their county of residence and are otherwise qualified to vote in Mississippi:

(a) Any enlisted or commissioned members, male or female, of the United States Army, or any of its respective components or various divisions thereof; any enlisted or commissioned members, male or female, of the United States Navy, or any of its respective components or various divisions thereof; any enlisted or commissioned members, male or female, of the United States Air Force, or any of its respective components or various divisions thereof; any enlisted or commissioned members, male or female, of the United States Marines, or any of its respective components or various divisions thereof; or any persons in any division of the armed services of the United States, who are citizens of Mississippi;

(b) Any member of the Merchant Marine and the American Red Cross who is a citizen of Mississippi;

(c) Any disabled war veteran who is a patient in any hospital and who is a citizen of Mississippi;

(d) Any civilian attached to and serving outside of the United States with any branch of the Armed Forces or with the Merchant Marine or American Red Cross, and who is a citizen of Mississippi;

(e) Any trained or certified emergency response provider who is deployed during the time period authorized by law for absentee voting, on election day, or during any state of emergency declared by the President of the United States or any Governor of any state within the United States;

(f) Any citizen of Mississippi temporarily residing outside the territorial limits of the United States and the District of Columbia;

(g) Any citizen of Mississippi enrolled as a student at the United States Navel Academy, the United States Coast Guard Academy, the United States Merchant Marine Academy, the United States Air Force Academy or the United States Military Academy.

(2) The spouse and dependents of any absent voter as set out in paragraphs (a) through (g) of subsection (1) of this section shall also be included in the meaning of absent voter and may register to vote and vote an absentee ballot as provided in this subarticle if also absent from the county of their residence on the date of the election and otherwise qualified to vote in Mississippi.

(3) For the purpose of this subarticle, the term "election" shall mean and include the following sets of elections: special and runoff special elections,

preferential and general elections, first and second primary elections or general elections without preferential elections, whichever system is applicable.

SOURCES: Derived from 1972 Code § 23-9-503 [Codes, 1942, § 3203-202; Laws, 1972, ch. 490, § 202; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 216; Laws, 2000, ch. 519, § 1; Laws, 2010, ch. 446, § 1; Laws, 2012, ch. 465, § 1; Laws, 2014, ch. 450, § 1, eff from and after July 1, 2014.

Editor's Note — There was a typographical error in the language added in (1)(g) by Section 1 of Chapter 450, Laws of 2014. The act added: "...the United States Navel Academy..." but the language should have been "the United States Naval Academy." The section is set out above as amended by Section 1 of Chapter 450, Laws of 2014.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

By letter dated September 17, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 465.

Amendment Notes — The 2010 amendment inserted "(e) and (f)" and "register to vote and" in (2).

The 2012 amendment added "persons if they are absent from their county of residence and are otherwise qualified to vote in Mississippi" at the end of (1).

The 2014 amendment added (1)(e) and redesignated remaining subsections accordingly; in (1)(g), substituted "the United States Navel Academy, the United States Coast Guard Academy, the United States Merchant Marine Academy, the United States Air Force Academy or the" for "a"; and in (2), substituted "through (g)" for "(b), (c), (d), (e) and (f)."

§ 23-15-677. Use of federal postcard application or Federal Write-In-Absentee Ballot.

(1) All absent voters as defined in Section 23-15-673(1) and (2) may use a duly executed federal postcard application (as provided for in the Uniformed and Overseas Citizens Absentee Voting Act, 42 USCS 1973ff et seq.) to request a ballot or to register to vote, or to do both simultaneously.

(2) An absent voter who registers to vote utilizing a federal postcard application or a Federal Write-In-Absentee Ballot may vote in an election if the voter was registered to vote ten (10) or more days prior to the date of the election.

SOURCES: Derived from 1972 Code § 23-9-507 [Codes, 1942, § 3203-203; Laws, 1972, ch. 490, § 203; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 218; Laws, 2000, ch. 519, § 2; Laws, 2010, ch. 446, § 2, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

Amendment Notes — The 2010 amendment added (2).

§ 23-15-681. Absentee ballot envelopes.

Except as otherwise provided in this subarticle, all official absentee ballots shall be sent out and returned in envelopes on which there is printed across the face two (2) parallel horizontal bars, each one-fourth (¼) of an inch wide, extending from one side of the envelope to the other side, with an intervening space of one-fourth (¼) of an inch, the top bar to be one and one-fourth (1-¼) inches from the top of the envelope, and with the words "OFFICIAL ELECTION BALLOTING MATERIAL-VIA AIR MAIL" between the bars. In the upper right corner of each such envelope there shall be printed in a box the words "FREE OF U.S. POSTAGE, INCLUDING AIR MAIL." All printing on the face of such envelopes shall be in black, and there shall be printed in black in the upper left corner of all such ballot envelopes an appropriate inscription for the return address of the sender.

SOURCES: Derived from 1972 Code § 23-9-511 [Codes, 1942, § 3203-204; Laws, 1972, ch. 490, § 204; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 220; Laws, 2000, ch. 592, § 11; Laws, 2010, ch. 446, § 10, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

Amendment Notes — The 2010 amendment added "Except as otherwise provided in this subarticle" to the beginning of the paragraph.

§ 23-15-687. Applications for absentee ballots; preservation of applications.

(1)) The registrar shall keep all applications for absentee ballots and shall, within twenty four (24) hours, if possible, send to the absent voter on whose behalf the application is made, the proper affidavit and the proper ballot or ballots applicable to the elections. Such information shall be processed through the Statewide Election Management System.

(2) One (1) application for an absentee ballot shall serve as a request by the applicant for an absentee ballot for:

(a) The next federal general election, including all primary elections associated with the election;

(b) All state and county primary and general elections that occur after the receipt of the application by the registrar through the date of the next federal general election that occurs after the receipt of the application by the registrar.

(3) The registrar shall preserve all applications for absentee ballots for one (1) year as a record to be furnished to any court or other duly constituted authority for inspection or evidence if properly requested.

(4)) If the registrar rejects an application for an absentee ballot or denies a request to register to vote from a uniformed services applicant or an overseas voter, the registrar shall provide the person with the reasons for the rejection.

(5) Any runoff election for a federal election shall be considered a continuation of such federal election.

(6) An absent voter as defined in Section 23-15-673(1) may sign an absentee ballot application by electronic signature. The Secretary of State shall adopt rules necessary to implement this subsection.

SOURCES: Derived from 1972 Code § 23-9-517 [Codes, 1942, § 3203-206; Laws, 1972, ch. 490, § 206; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 223; Laws, 2000, ch. 519, § 4; Laws, 2004, ch. 305, § 16; Laws, 2010, ch. 446, § 3; Laws, 2012, ch. 465, § 2; Laws, 2012, ch. 471, § 4, eff September 6, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Joint Legislative Committee Note — This section was amended by Section 2 of Chapter 465, Laws of 2012, effective from and after September 17, 2012, the date it was effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended (approved April 23, 2012). It was also amended by Section 4 of Chapter 471, Laws of 2012, effective from and after September 6, 2012, the date it was effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended (approved April 24, 2012). As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments, contingent on preclearance, as consistent with the legislative intent at the August 16, 2012, meeting of the Committee.

Editor's Note — By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

By letter dated September 6, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 471.

By letter dated September 17, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 465.

Amendment Notes — The 2010 amendment rewrote (2)(a); substituted "date of the next federal" for "date of the second federal" in (2)(b); and added (5).

The first 2012 amendment (ch. 465), added (6).

The second 2012 amendment (ch. 471), added the last sentence in (1).

§ 23-15-691. Prompt distribution of absentee ballot materials; separation of envelope and other materials; instructions as to notation on envelope and use of ink or indelible pencil.

As soon as possible after the printing of the official absentee ballot for any election, the registrar of the county shall send to any absent voter as defined in this subarticle, who shall, upon proper application, have requested same,

the official absentee voter ballot or ballots provided for in this subarticle and the instructions for voting and returning the ballot. If the ballot is sent by mail the registrar shall send a self-addressed envelope or envelopes with the ballot and the instructions.

If the ballot is sent by mail, the gummed flap of the envelope provided for the return of the ballot must be separated by wax paper or other appropriate protective insert from the remaining balloting material. The voting instructions shall require a notation of the facts on the back of the envelope duly signed by the voter.

If applicable, the instructions shall indicate that the ballot shall be marked in ink or indelible pencil.

SOURCES: Derived from 1972 Code § 23-9-521 [Codes, 1942, § 3203-208; Laws, 1972, ch. 490, § 208; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 225; Laws, 2010, ch. 446, § 11, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

Amendment Notes — The 2010 amendment rewrote the section.

ATTORNEY GENERAL OPINIONS

A municipal party executive committee may not hear or act on a petition challenging a candidate's qualifications that is filed after the statutory deadline of ten days after the qualifying deadline. McInnis, Apr. 13, 2005, A.G. Op. 05-0185.

§ 23-15-692. Federal Write-In Absentee Ballot.

(1) An absent voter who resides outside the United States, who is a member of the United States Armed Forces or who is a family member of a member of the Armed Forces, and who is a registered voter of the State of Mississippi, may use the Federal Write-In-Absentee Ballot as provided for by 42 USCS 1973ff-2 in general, special, primary and runoff elections for local, state and federal offices.

(2) Upon receipt of a Federal Write-In-Absentee Ballot executed by a person who is a registered voter or whose information on the form is sufficient to register or update the registration of that person, the Federal Write-In-Absentee Ballot shall be considered as an absentee ballot request. Nothing in this subsection shall suspend the voter registration deadlines otherwise provided by law.

SOURCES: Laws, 2000, ch. 519, § 7; Laws, 2010, ch. 446, § 4, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

Amendment Notes — The 2010 amendment added (2).

§ 23-15-693. Completion of declaration specified in federal Uniformed and Overseas Citizens Absentee Voting Act.

The absent voter, upon receipt of the absentee ballot, shall complete the declaration specified in the Uniformed and Overseas Citizens Absentee Voting Act, 42 USC Section 1973ff et seq.

SOURCES: Derived from 1972 Code § 23-9-523 [Codes, 1942, § 3203-209; Laws, 1972, ch. 490, § 209; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 226; Laws, 2010, ch. 446, § 5, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

Amendment Notes — The 2010 amendment rewrote the section.

§ 23-15-695. Repealed.

Repealed by Laws, 2010, ch. 446, § 12, effective July 9, 2010, (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the repeal of this section.)

§ 23-15-695. [Derived from 1972 Code § 23-9-525 [Codes, 1942, § 3203-210; Laws, 1972, ch. 490, § 210; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 227; Laws, 2000, ch. 519, § 5, eff from and after August 7, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section.]

Editor's Note — Former § 23-15-695 specified those persons authorized to administer and attest oaths for absentee ballots under the Armed Services Absentee Voting Law.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the repeal of this section by Laws of 2010, ch. 446.

§ 23-15-699. Transmission of absentee ballots and balloting materials to absent voters and receipt of voted absentee ballots, federal postcard applications and Federal Write-In-Absentee Ballots by mail, facsimile or electronic mail delivery.

(1) Absent voters who have requested to receive absentee ballots and balloting materials may choose to receive such ballots and balloting materials

by mail, facsimile device (FAX) or electronic mail delivery (e-mail). The Secretary of State shall establish procedures that allow an absent voter to make the choice authorized by this subsection.

(2) Consistent with the choice that the absent voter exercises pursuant to subsection (1) of this section, the registrar shall, in addition to mail, be authorized to use electronic facsimile (FAX) devices and electronic mail delivery (e-mail) to transmit balloting materials and absentee ballots. If the absent voter does not indicate a preference, delivery of such information shall be by mail.

(3) The registrar is authorized to receive by electronic facsimile (FAX) devices and electronic mail delivery (e-mail):

(a) Voted absentee ballots;

(b) Completed federal postcard applications as described in Section 23-15-677, which shall serve to request absentee ballots or to register to vote or to do both simultaneously; and

(c) Completed Federal Write-In-Absentee Ballots as described in Section 23-15-692.

(4) Once the registrar has received a voted absentee ballot pursuant to this section, he shall place the ballot in an absentee ballot envelope designated for absentee ballots under this subarticle and fill out the required information on the envelope. The registrar shall then notate on the envelope that the ballot was received under this section and a signature across the flap of the envelope shall not be required. Except as provided in this section, absentee ballots received under this subsection shall be treated in the same manner as other absentee ballots received under this subarticle.

(5) Access to voted absentee ballots before they are placed in an absentee ballot envelope shall be strictly limited to election officials who must process the ballot and any election official who views the ballots before they are placed in the envelope shall have the duty to protect the secrecy of the ballot choices; however, the failure of an election official to comply with this subsection shall not invalidate the ballot.

(6) Each circuit clerk shall furnish a suitable electronic mail delivery (e-mail) address that can be used to allow absent voters to comply with the provisions of this subarticle. Absentee ballots returned by any absent voter as defined in Section 23-15-673 must be received by the registrar by 7:00 p.m. on the date of the election.

SOURCES: Laws, 1993, ch. 528, § 13; Laws, 2000, ch. 519, § 6; Laws, 2010, ch. 446, § 6; Laws, 2012, ch. 465, § 3, eff September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

By letter dated September 17, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 465.

Amendment Notes — The 2010 amendment rewrote the section.
The 2012 amendment added the last sentence in (6).

§ 23-15-701. Compliance with Uniformed and Overseas Citizens Absentee Voting Act; Secretary of State granted emergency powers over conduct of elections during armed conflict.

(1) The Secretary of State shall adopt such rules which are necessary and essential to implement this subarticle and to bring the state into compliance with the Uniformed and Overseas Citizens Absentee Voting Act, 42 USCS Section 1973ff et seq. The Secretary of State shall furnish the Legislature with a copy of such rules sixty (60) days after adoption by the Secretary of State.

(2) The Secretary of State may exercise emergency powers concerning absentee voting and registration of military personnel over any election during an armed conflict or other military contingencies involving United States Armed Forces or mobilization of those forces, including state national guard or reserve components. The Secretary of State shall adopt rules describing the emergency powers and the situations in which the powers will be exercised.

SOURCES: Laws, 2000, ch. 519, § 9; Laws, 2010, ch. 446, § 7, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.
Amendment Notes — The 2010 amendment added (1).

SUBARTICLE C.

ABSENTEE VOTER LAW.

SEC.

§ 23-15-713. Electors qualified to vote as absentees.

JUDICIAL DECISIONS

5. Relation to other laws.

Black chairman of a county political party executive committee was guilty of racial discrimination under § 2 of the Voting Rights Act because, inter alia, he disregarded the absentee ballot law, including paying notaries per absentee ballot collected in violation of Miss. Code Ann. § 23-15-713. United States v. Brown, 494 F. Supp. 2d 440 (S.D. Miss.

June 29, 2007), affirmed by 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

§ 23-15-715. Applications for absentee ballots.

JUDICIAL DECISIONS

1. In general.

Government properly established, for purposes of Fed. R. Civ. P. 52, that a political party executive committee and its chairman violated § 2 of the Voting Rights Act, 42 U.S.C.S. § 1973, by intentionally diluting the voting power of white members of the party by obtaining large numbers of defective absentee ballots from black voters, facilitating improper counting of absentee ballots, and permitting improper assistance of black voters, contrary to the requirements of Miss. Code Ann. §§ 23-15-263, 23-15-715, and 23-15-549. United States v. Brown, 561 F.3d 420 (5th Cir. 2009).

§ 23-15-719. Delivery of ballots to applicant; completion of ballots; affidavit; delivery of ballots to registrar.

(1) Immediately upon completion of an application filed pursuant to the provisions of paragraph (a) of Section 23-15-715, the registrar shall deliver the necessary ballots to the applicant. The registrar shall identify the applicant by requiring him to present identification as required by Section 23-15-563, and shall then deliver the ballots to the applicant by mail or to the applicant in the registrar's office. The registrar shall not personally hand deliver ballots to voters, unless he delivers the ballots in the office of the registrar. The elector shall fill in his ballot in secret. After the applicant has properly marked the ballot and properly folded it, he shall deposit it in the envelope furnished him by the registrar.

After he has sealed the envelope, he shall subscribe and swear to an affidavit in the following form, which shall be printed on the back of the envelope containing the applicant's ballot:

"STATE OF MISSISSIPPI

COUNTY OF _____

I, _____, do solemnly swear that this envelope contains the ballot marked by me indicating my choice of the candidates or propositions to be submitted at the election to be held on the _____ day of _____, 2_____, and I hereby authorize the registrar to place this envelope in the ballot box on my behalf, and I further authorize the election managers to open this envelope and place my ballot among the other ballots cast before such ballots are counted, and record my name on the poll list as if I were present in person and voted.

I further swear that I marked the enclosed ballot in secret.

_____

(Signature of voter)

SWORN TO AND SUBSCRIBED before me, _____, this the _____ day of_____, 2_____.

(Registrar) _____

(Registrar)"

After the completion of the requirements of this section, the elector shall deliver the envelope containing the ballot to the registrar.

(2) If the voter has received assistance in marking his ballot, the person providing the assistance shall complete the following form which shall be printed on the back of the envelope containing the applicant's ballot:

"CERTIFICATE OF PERSON PROVIDING VOTER ASSISTANCE

(To be completed only if the voter has received assistance in marking the enclosed ballot.) I hereby certify that the above-named voter declared to me that he or she is blind, temporarily or permanently physically disabled, or cannot read or write, and that the voter requested that I assist the voter in marking the enclosed absentee ballot. I hereby certify that the ballot preferences on the enclosed ballot are those communicated by the voter to me, and that I have marked the enclosed ballot in accordance with the voter's instructions.

_____

Signature of person providing assistance

_____

Printed name of person providing assistance

_____

Address of person providing assistance

_____

Date and time assistance provided

_____

Family relationship to voter (if any)"

(3) The envelope used pursuant to this section shall not contain the form prescribed by Section 23-15-635 and shall have printed on the flap on the back of the envelope in bold print and in a distinguishing color, the following: **"YOUR VOTE WILL BE REJECTED AND NOT COUNTED IF THIS ENVELOPE IS NOT SIGNED ACROSS THE FLAP OF THIS ENVELOPE BY YOU AND AN ATTESTING WITNESS."**

SOURCES: Derived from 1972 Code § 23-9-611 [Codes, 1942, § 3203-306; Laws, 1972, ch. 490, § 306; repealed by Laws, 1986, ch. 495, § 343]; en, Laws, 1986, ch. 495, § 233; Laws, 1999, ch. 420, § 5; Laws, 2008, ch. 528, § 13; Laws, 2012, ch. 526, § 8, eff August 5, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965).

Editor's Note — On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

The effective date of the bill that amended this section, Chapter 526, Laws of 2012 (House Bill No. 921), is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was submitted to the United States Attorney General under Section 5, the United States Supreme Court, in the case of Shelby County v. Holder (June 25, 2013), struck down the

coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the Shelby County decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. Chapter 526 was submitted to the United States Attorney General before the Shelby County decision was rendered. In a letter dated August 5, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 526 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 526, so Chapter 526 became effective on the date of the response letter from the United States Attorney General, August 5, 2013.

Amendment Notes — The 2008 amendment added the language following "Section 23-15-635" at the end of (3).

The 2012 amendment substituted "identify the applicant by requiring him to present identification as required by Section 23-15-563, and shall then" for "only" in the second sentence of (1).

§ 23-15-721. Procedures applicable to electors temporarily residing outside county and to electors who are physically disabled; mailing of ballots to registrar.

(1) Electors temporarily residing outside the county and obtaining an absentee ballot under the provisions of paragraph (b) of Section 23-15-715 shall appear before any official authorized to administer oaths or other official authorized to witness absentee balloting as provided in this chapter. The elector shall exhibit to such official his absentee ballot unmarked and thereupon proceed in secret to fill in his ballot. After the elector has properly marked the ballot and properly folded it, he shall deposit it in the envelope furnished him. After he has sealed the envelope he shall deliver it to the official before whom he is appearing and shall subscribe and swear to the elector's certificate provided for in Section 23-15-635, which affidavit shall be printed on the back of the envelope as provided for in Section 23-15-635.

(2) Electors who are temporarily or permanently physically disabled shall sign the elector's certificate and the certificate of attesting witness shall be signed by any person eighteen (18) years of age or older.

(3) After the completion of the requirements of this section, the elector shall mail the envelope containing the ballot to the registrar in the county wherein said elector is qualified to vote. Except as otherwise provided by Section 23-15-699 and excluding presidential ballots as provided for in Sections 23-15-731 and 23-15-733, the ballots must be received by the registrar prior to 5:00 p.m. on the day preceding the election to be counted.

SOURCES: Derived from 1972 Code § 23-9-613 [Codes, 1942, § 3203-307; Laws, 1972, ch. 490, § 307; repealed by Laws, 1986, ch. 495, § 343]; en, Laws, 1986, ch. 495, § 234; Laws, 2012, ch. 465, § 5, eff September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated September 17, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 465.

Amendment Notes — The 2012 amendment inserted "Except as otherwise provided by Section 23-15-699 and excluding presidential ballots as provided for in Sections 23-15-731 and 23-15-733" and made a minor stylistic change in the last sentence in (3).

SUBARTICLE D.

PROVISION APPLICABLE TO PRESIDENTIAL ELECTION.

SEC.
23-15-733. Disposition of ballots received after election.

§ 23-15-733. Disposition of ballots received after election.

The registrar shall keep safely and unopened all official presidential absentee ballots which are received subsequent to the election. Upon receipt of such ballot, the registrar shall write the day and hour of the receipt of the ballot on its envelope. All such absentee ballots returned to the registrar shall be safely kept unopened by the registrar for the period of time required for the preservation of ballots used in the election, and shall then, without being opened, be destroyed in like manner as the used ballots of the election. Such information shall be processed through the Statewide Election Management System.

SOURCES: Derived from 1972 Code § 23-11-7 [Codes, 1942, § 3203-105 ; Laws, 1972, ch. 490, § 105; repealed by Laws, 1986, ch. 495, § 345]; en, Laws, 1986, ch. 495, § 236; Laws, 2012, ch. 471, § 5, eff September 6, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated September 6, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 471.

Amendment Notes — The 2012 amendment added the last sentence of the section.

ARTICLE 21.

PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTORS.

SUBARTICLE B.

SELECTION OF PRESIDENTIAL ELECTORS AT GENERAL ELECTION.

SEC.
23-15-785. Certificates of nomination and nominating petitions; preparation of official ballots.

§ 23-15-785. Certificates of nomination and nominating petitions; preparation of official ballots.

(1) When presidential electors are to be chosen, the Secretary of State of Mississippi shall certify to the circuit clerks of the several counties the names of all candidates for President and Vice President who are nominated by any national convention or other like assembly of any political party or by written petition signed by at least one thousand (1,000) qualified voters of this state.

(2) The certificate of nomination by a political party convention must be signed by the presiding officer and secretary of the convention and by the chairman of the state executive committee of the political party making the nomination. Any nominating petition, to be valid, must contain the signatures as well as the addresses of the petitioners. The certificates and petitions must be filed with the State Board of Election Commissioners by filing them in the Office of the Secretary of State by 5:00 p.m. not less than sixty (60) days previous to the day of the election.

(3) Each certificate of nomination and nominating petition must be accompanied by a list of the names and addresses of persons, who shall be qualified voters of this state, equal in number to the number of presidential electors to be chosen. Each person so listed shall execute the following statement which shall be attached to the certificate or petition when it is filed with the State Board of Election Commissioners: "I do hereby consent and do hereby agree to serve as elector for President and Vice President of the United States, if elected to that position, and do hereby agree that, if so elected, I shall cast my ballot as such for _____ for President and _____ for Vice President of the United States" (inserting in said blank spaces the respective names of the persons named as nominees for said respective offices in the certificate to which this statement is attached).

(4) The State Board of Election Commissioners and any other official charged with the preparation of official ballots shall place on such official ballots the words "PRESIDENTIAL ELECTORS FOR (here insert the name of the candidate for President, the word 'AND' and the name of the candidate for Vice President)" in lieu of placing the names of such presidential electors on the official ballots, and a vote cast therefor shall be counted and shall be in all respects effective as a vote for each of the presidential electors representing those candidates for President and Vice President of the United States. In the case of unpledged electors, the State Board of Election Commissioners and any other official charged with the preparation of official ballots shall place on such official ballots the words "UNPLEDGED ELECTOR(S) (here insert the name(s) of individual unpledged elector(s) if placed upon the ballot based upon a petition granted in the manner provided by law stating the individual name(s) of the elector(s) rather than a slate of electors)."

SOURCES: Derived from 1972 Code § 23-5-210 [Laws, 1982, ch. 478, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 243; Laws, 2010, ch. 373, § 1, eff June 9, 2010 (the date the United States Attorney

General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated June 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 373, § 1.

Amendment Notes — The 2010 amendment inserted "by 5:00 p.m." near the end of (2); and made minor stylistic changes.

ARTICLE 23.

DISCLOSURE OF CAMPAIGN FINANCES.

§ 23-15-801. Definitions.

RESEARCH REFERENCES

ALR. Constitutional Validity of State or Local Regulation of Contributions by or to Political Action Committees. 24 A.L.R.6th 179.

ARTICLE 25.

VACANCIES IN OFFICE.

SEC.

§ 23-15-832. Notice to Secretary of State of vacancy in office for which special election is required to be called to fill.

When a vacancy shall occur in an elective office for which a special election is required to be called to fill, the entity with whom candidates for the office are required to qualify shall notify the Secretary of State of the vacancy within five (5) days after it receives knowledge of the vacancy.

SOURCES: Laws, 2008, ch. 528, § 2, eff August 7, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's Note — On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the enactment of this section by Laws of 2008, ch. 528.

§ 23-15-833. Special elections to fill vacancies in county, county district, and district attorney offices, and office of circuit judge or chancellor.

Except as otherwise provided by law, the first Tuesday after the first Monday in November of each year shall be designated the regular special election day, and on that day an election shall be held to fill any vacancy in county, county district, and district attorney elective offices, and any vacancy in the office of circuit judge or chancellor.

All special elections, or elections to fill vacancies, shall in all respects be held, conducted and returned in the same manner as general elections, except that where no candidate receives a majority of the votes cast in such election, then a runoff election shall be held three (3) weeks after such election and the two (2) candidates who receive the highest popular votes for such office shall have their names submitted as such candidates to the said runoff and the candidate who leads in such runoff election shall be elected to the office. When there is a tie in the first election of those receiving the next highest vote, these two (2) and the one receiving the highest vote, none having received a majority, shall go into the runoff election and whoever leads in such runoff election shall be entitled to the office.

In those years when the regular special election day shall occur on the same day as the general election, the names of candidates in any special election and the general election shall be placed on the same ballot, but shall be clearly distinguished as general election candidates or special election candidates.

At any time a special election is held on the same day as a party primary election, the names of the candidates in the special election may be placed on the same ballot, but shall be clearly distinguished as special election candidates or primary election candidates.

SOURCES: Derived from 1972 Code § 23-5-203 [Codes, 1880, § 158; 1892, § 3685; 1906, § 4193; Hemingway's 1917, § 6827; 1930, § 6267; 1942, § 3296; Laws, 1954, ch. 356; Laws, 1984, ch. 465, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 249; Laws, 2007, ch. 434, § 1; Laws, 2011, ch. 509, § 3, eff July 26, 2011 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of the second paragraph. The word "the" was added preceding "next highest vote" so that "election of those receiving next highest vote" reads "election of those receiving the next highest vote." The Joint Committee ratified the correction at its August 5, 2008, meeting.

Editor's Note — By letter dated July 26, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2011, ch. 509.

Amendment Notes — The 2011 amendment added "and any vacancy in the office of circuit judge or chancellor" to the end of the first paragraph.

§ 23-15-839. Appointments to fill vacancies in county or county district offices; special election procedures; procedure where only one person has qualified for candidacy in special election.

ATTORNEY GENERAL OPINIONS

If in a special election for county election commissioner there is only one qualified candidate, then by following the provisions of Section 23-15-839(2) the election commission may dispense with the special election without regard to a general election for county school board member offices. Sanford, July 15, 2005, A.G. Op. 05-0315.

If it is determined that a candidate for the office of justice court judge is a resident of the district he seeks to serve and is a registered voter of the county and is not otherwise disqualified, he would be entitled to have his name placed on the ballot even if the address given on his qualifying papers does not match his actual residence. Dillon, Sept. 23, 2005, A.G. Op. 05-0490.

§ 23-15-849. Special elections to fill vacancies in office of judge of Supreme Court, Court of Appeals, circuit judge, or chancellor; interim appointments.

(1) Vacancies in the office of circuit judge or chancellor shall be filled for the unexpired term by the qualified electors at the next regular special election occurring more than nine (9) months after the existence of the vacancy to be filled, and the term of office of the person elected to fill a vacancy shall commence on the first Monday in January following his election. Upon the occurring of such a vacancy, the Governor shall appoint a qualified person from the district in which the vacancy exists to hold the office and discharge the duties thereof until the vacancy shall be filled by election as provided in this subsection.

(2)(a) If half or more than half of the term remains, vacancies in the office of judge of the Supreme Court or Court of Appeals shall be filled for the unexpired term by the qualified electors at the next regular election for state officers or for representatives in Congress occurring more than nine (9) months after the existence of the vacancy to be filled, and the term of office of the person elected to fill a vacancy shall commence on the first Monday in January following his election. If less than half of the term remains, vacancies in the office of judge of the Supreme Court or Court of Appeals shall be filled for the remaining unexpired term solely by appointment as provided in this subsection.

(b) Upon occurrence of a vacancy, the Governor shall appoint a qualified person from the district in which the vacancy exists to hold the office and discharge the duties thereof as follows:

(i) If less than half of the term remains, the appointee shall serve until expiration of the term;

(ii) If half or more than half of the term remains, the appointee shall serve until the vacancy shall be filled by election as provided in subsection (1) of this section for judges of the circuit and chancery courts. Elections to fill vacancies in the office of judge of the Supreme Court or Court of Appeals shall be held, conducted, returned and the persons elected commissioned in accordance with the law governing regular elections for judges of the Supreme Court or Court of Appeals insofar as they may be applicable.

(c) This subsection (2) shall apply to all gubernatorial appointees to the Supreme Court or Court of Appeals who have not stood for special election as of July 2, 2002, as if Laws, 2002, Chapter 586, were in full force and effect on the day of each of their appointments.

SOURCES: Derived from 1972 Code § 23-5-247 [Codes, Hemingway's 1917, § 6855; 1930, § 6287; 1942, §§ 3190, 3316; Laws, 1916, ch. 161; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 257; Laws, 1993, ch. 518, § 29; Laws, 2002, ch. 586, § 1; Laws, 2011, ch. 509, § 4, eff July 26, 2011 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 26, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2011, ch. 509.

Amendment Notes — The 2011 amendment substituted "regular special election" for "regular election for state officers or for representatives in Congress" preceding "occurring more than nine (9) months after the existence" in the first sentence of (1).

JUDICIAL DECISIONS

1. Write-in election.

Write-in election for a circuit court judge was proper under Miss. Code Ann. § 23-15-365 because the circuit judge passed away after qualifying for the November 2, 2010 election, and Miss. Code Ann. § 9-1-103 permitted the appointee judge to serve for the unexpired term with no requirement of a special election since the circuit judge died fewer than nine months before the expiration of his term; the use of the word "or" in Miss. Code Ann. § 9-1-103 means that an election under Miss. Code Ann. § 23-15-849(1) need not occur if there is so little time in the unexpired term that the appointee may legally serve for the unexpired term. Rayner v. Barbour, 47 So. 3d 128 (Miss. 2010).

§ 23-15-851. Elections to fill vacancies in offices in Legislature; notice.

(1) Except as otherwise provided in subsection (2) of this section, within thirty (30) days after vacancies occur in either House of the Legislature, the

Governor shall issue writs of election to fill the vacancies on a day specified in the writ of election. At least forty (40) days' notice shall be given of the election in each county or part of a county in which the election shall be held. The qualifying deadline for the election shall be thirty (30) days prior to the election. Notice of the election shall be posted at the courthouse and in each supervisors district in the county or part of county in which such election shall be held for as near forty (40) days as may be practicable. The election shall be prepared for and held as in the case of a general election.

(2) If a vacancy occurs on or after June 1 of a year in which the general election for state officers is held, the Governor may elect not to issue a writ of election to fill the vacancy.

SOURCES: Derived from 1972 Code § 23-5-201 [Codes, 1857, ch 4, art 29; 1871, § 395; 1880, § 157; 1892, § 3684; 1906, § 4192; Hemingway's 1917, § 6826; 1930, § 6266; 1942, § 3295; Laws, 1956, ch. 405, § 1; Repealed by Laws, 1986, ch. 495, § 335]; Laws, 1986, ch. 495, § 258; Laws, 2007, ch. 570, § 1, eff September 10, 2007 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — This section is being reprinted in the supplement to reflect the preclearance of the amendment to this section by Laws of 2007, ch. 570.

On September 10, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 570.

§ 23-15-853. Special elections to fill vacancies in representation in Congress; notice; qualification by candidates.

(1) If a vacancy happens in the representation in Congress, the vacancy shall be filled for the unexpired term by a special election, to be ordered by the Governor, within sixty (60) days after such vacancy occurs, and to be held at a time fixed by his order, and which time shall be not less than sixty (60) days after the issuance of the order of the Governor, which shall be directed to the commissioners of election of the several counties of the district, who shall, immediately on the receipt of the order, give notice of the election by publishing the same in some newspaper having a general circulation in the county and by posting notice thereof at the front door of the courthouse. The order shall also be directed to the State Board of Election Commissioners. The election shall be prepared for and conducted, and returns shall be made, in all respects as provided for a special election to fill vacancies.

(2) Candidates for the office in such an election must qualify with the Secretary of State by 5:00 p.m. not less than forty-five (45) days previous to the date of the election. The commissioners of election shall have printed on the ballot in such special election the name of any candidate who shall have been requested to be a candidate for the office by a petition filed with the Secretary of State and personally signed by not less than one thousand (1,000) qualified electors of the district. The petition shall be filed by 5:00 p.m. not less than forty-five (45) days previous to the date of the election.

There shall be attached to each petition above provided for, upon the time of filing with said Secretary of State, a certificate from the appropriate registrar or registrars showing the number of qualified electors appearing upon each such petition which the registrar shall furnish to the petitioner upon request.

SOURCES: Derived from 1972 Code § 23-5-221 [Codes, 1857, ch. 4, art 35; 1871, § 361; 1880, § 162; 1892, § 3689; 1906, § 4196; Hemingway's 1917, § 6830; 1930, § 6275; 1942, § 3304; Laws, 1968 ch. 572, §§ 1, 2; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 259; Laws, 2000, ch. 592, § 13; Laws, 2007, ch. 604, § 5, eff September 10, 2007 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — This section is being reprinted in the supplement to reflect the preclearance of the amendment to this section by Laws of 2007, ch. 604.

On September 10, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 604.

§ 23-15-855. Elections to fill vacancies in office of U.S. Senator; interim appointments by Governor.

JUDICIAL DECISIONS

1. Construction and application.

Miss. Code Ann. § 23-15-855 is silent regarding the situation in which a senatorial vacancy occurs after a general state or congressional election, and the statute fails to implement the specific power granted to the legislature by the Seventeenth Amendment for directing the filling of the vacancy by election. As such, the general power granted to the executive branch of the state by the Seventeenth Amendment to issue writs of election is controlling. Barbour v. State ex rel. Hood, 974 So. 2d 232 (Miss. 2008).

As portions of Miss. Code Ann. § 23-15-855 were ambiguous, and others silent, a writ of election issued by the Governor on December 20, 2007, designating November 4, 2008, as the general election day for electing a U.S. Senator to complete the term of office of a Senator who had resigned was not constitutionally infirm. The circuit court erred, as a matter of law, in deeming § 23-15-855 plain, clear, and unambiguous, and then finding the writ of election exceeded the Governor's constitutional and statutory authority. Barbour v. State ex rel. Hood, 974 So. 2d 232 (Miss. 2008).

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of 17th Amendment to United States Constitution, Providing for Direct Election of Senators and Filling Vacancies in State's Senatorial Delegation. 68 A.L.R.6th 489.

§ 23-15-857. Appointments to fill vacancies in city, town, or village offices; elections to fill such offices; procedure where no person or only one person has qualified as candidate.

(1) When it shall happen that there is any vacancy in a city, town or village office which is elective, the unexpired term of which shall not exceed six (6) months, the same shall be filled by appointment by the governing authority or remainder of the governing authority of said city, town or village. The municipal clerk shall certify to the Secretary of State the fact of such appointment, and the person or persons so appointed shall be commissioned by the Governor.

(2) When it shall happen that there is any vacancy in an elective office in a city, town or village the unexpired term of which shall exceed six (6) months, the governing authority or remainder of the governing authority of said city, town or village shall make and enter on the minutes an order for an election to be held in such city, town or village to fill the vacancy and fix a date upon which such election shall be held. Such order shall be made and entered upon the minutes at the next regular meeting of the governing authority after such vacancy shall have occurred, or at a special meeting to be held not later than ten (10) days after such vacancy shall have occurred, Saturdays, Sundays and legal holidays excluded, whichever shall occur first. Such election shall be held on a date not less than thirty (30) days nor more than forty-five (45) days after the date upon which the order is adopted.

Notice of such election shall be given by the municipal clerk by notice published in a newspaper published in the municipality. Such notice shall be published once each week for three (3) successive weeks preceding the date of such election. The first notice to be published at least thirty (30) days before the date of such election. Notice shall also be given by posting a copy of such notice at three (3) public places in such municipality not less than twenty-one (21) days prior to the date of such election. One (1) of such notices shall be posted at the city, town or village hall. In the event that there is no newspaper published in the municipality, then such notice shall be published as provided for above in a newspaper which has a general circulation within the municipality and by posting as provided for above. In addition, the governing authority may publish such notice in such newspaper for such additional times as may be deemed necessary by the governing authority.

Each candidate shall qualify by petition filed with the municipal clerk by 5:00 p.m. at least twenty (20) days before the date of the election and such petition shall be signed by not less than the following number of qualified electors:

(a) For an office of a city, town or village having a population of one thousand (1,000) or more, not less than fifty (50) qualified electors.

(b) For an office of a city, town or village having a population of less than one thousand (1,000), not less than fifteen (15) qualified electors.

No qualifying fee shall be required of any candidate, and the election provided for herein shall be held as far as practicable in the same manner as municipal general elections.

The candidate receiving a majority of the votes cast in said election shall be elected. If no candidate shall receive a majority vote at the election, the two (2) candidates receiving the highest number of votes shall have their names placed on the ballot for the election to be held two (2) weeks thereafter. The candidate receiving a majority of the votes cast in said election shall be elected. However, if no candidate shall receive a majority and there is a tie in the election of those receiving the next highest vote, those receiving the next highest vote and the candidate receiving the highest vote shall have their names placed on the ballot for the election to be held two (2) weeks thereafter, and whoever receives the most votes cast in such election shall be elected.

Should the election to be held two (2) weeks thereafter result in a tie vote, the candidate to prevail shall be decided by lot, fairly and publicly drawn under the supervision by the election commission with the aid of two (2) or more qualified electors of the municipality.

The clerk of the election commission shall then give a certificate of election to the person elected, and shall return to the Secretary of State a copy of the order of holding the election and runoff election showing the results thereof, certified by the clerk of the governing authority. The person elected shall be commissioned by the Governor.

However, if nineteen (19) days prior to the date of the election only one (1) person shall have qualified as a candidate, the governing authority, or remainder of the governing authority, shall dispense with the election and appoint that one (1) candidate in lieu of an election. In the event no person shall have qualified by 5:00 p.m. at least twenty (20) days prior to the date of the election, the governing authority or remainder of the governing authority shall dispense with the election and fill the vacancy by appointment. The clerk of the governing authority shall certify to the Secretary of State the fact of the appointment, and the person so appointed shall be commissioned by the Governor.

SOURCES: Derived from 1972 Code § 21-11-9 [Codes 1892, § 3031; 1906, § 3436; Hemingway's 1917, § 5996; 1930, § 2598; 1942, § 3374-64; Laws, 1950, ch. 491, § 64; Laws, 1971, ch. 494, § 1; repealed by Laws, 1986, ch. 495, § 329]; en, Laws, 1986, ch. 495, § 261; Laws, 2000, ch. 592, § 14; Laws, 2004, ch. 512, § 1; Laws, 2007, ch. 434, § 2, eff June 15, 2007 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence of the fourth paragraph from the end of subsection (2). The word "a", was deleted following "in" so that "the votes cast in a said election" will read "the votes cast in said election." The Joint Committee ratified the correction at its August 5, 2008, meeting.

ATTORNEY GENERAL OPINIONS

An incumbent alderman who served for the preceding term in an office for which no candidate has filed a valid qualifying petition for the upcoming term could "hold

over" in accordance with Sections 21-15-1 and 25-1-7, until a special election to fill a vacancy is held as required by Section 23-15-857, assuming his bond remains in effect. Wiggins, May 6, 2005, A.G. Op. 05-0216.

A candidate could establish his residence within the corporate limits 30 days before the election and then file his qualifying papers at least 20)days prior to the municipal special election and be eligible to have his name placed on the ballot. Turnage, Aug. 23, 2006, A.G. Op. 06-0400.

Where a city charter does not contain a specific timetable for setting the date of a special election, Section 23-15-857 should be followed. Turnage, Aug. 23, 2006, A.G. Op. 06-0400.

There is no authority for municipal governing authorities to remove or suspend an elected police chief based on an indictment. A municipal governing authority may make the police chief or other municipal officers appointive, rather than elective, by adopting an ordnance, not within 90 days of an election, that will become effective when the current officer's term expires. If an elected Chief of Police resigns or is disqualified from his position and the remainder of the term is over 6 months, the City must hold a special election to fill the vacancy pursuant to Miss. Code Ann. § 23-15-857. Elliott, March 23, 2007, A.G. Op. #07-00137, 2007 Miss. AG LEXIS 116.

ARTICLE 27.

REGULATION OF ELECTIONS.

§ 23-15-871. General prohibitions with respect to employers, employees, and public officials.

ATTORNEY GENERAL OPINIONS

Under state law, an employee of the Mississippi Development Authority may continue that employment during candidacy for an elective office. A state employee may take personal leave while running for office until exhausting all accrued personal leave and all lawfully accumulated compensatory leave, and then the appropriate appointing authority may lawfully grant a leave of absence without pay. Swoope, February 16, 2007, A.G. Op. #07-00082, 2007 Miss. AG LEXIS 23.

§ 23-15-895. Prohibition against distribution of campaign material within 150 feet of polling place; prohibition against appearance of certain persons at polling place while armed, uniformed, or displaying badge or credentials.

JUDICIAL DECISIONS

2.5 Relation to federal law.

Black chairman of a county political party executive committee was guilty of racial discrimination under § 2 of the Voting Rights Act because, inter alia, he enforced the poll place anti-campaigning rules in Miss. Code Ann. § 23-15-895 in a way that treated white candidates disparately from black candidates for the purpose of diluting the white vote. United States v. Brown, 494 F. Supp. 2d 440 (S.D. Miss. June 29, 2007), affirmed by 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

ARTICLE 29.

ELECTION CONTESTS.

SUBARTICLE A.

GENERAL PROVISIONS.

§ 23-15-911. Control of ballot boxes and their contents after general or primary elections; examinations by candidates or their representatives.

JUDICIAL DECISIONS

0.5. Compliance with statute.

Candidate contesting the election complied with Miss. Code Ann. § 23-15-911 by provision of the candidate's handwritten petition on May 4, 2005, to the city clerk, who in turn notified each of the candidates of the candidate's right to examine the boxes; the notice was signed by each of the four candidates five days before the candidate inspected the ballot boxes. Moore v. Parker, 962 So. 2d 558 (Miss. 2007).

§ 23-15-913. Judges to be available to hear and resolve election day disputes.

The judges selected to hear election disputes shall be available on election day to immediately hear and resolve any election day disputes. The rules for filing pleadings shall be relaxed to carry out the purposes of this section. The judges selected shall perform no other judicial duties on election day. The Supreme Court shall make judges available to hear disputes in the county in which the disputes occur but no judge shall hear disputes in the district, subdistrict or county in which he was elected nor shall any judge hear any dispute in which any potential conflict may arise. Each judge shall be fair and impartial and shall be assigned on that basis.

SOURCES: Laws, 1999, ch. 301, § 15; Laws, 2012, ch. 473, § 1, eff September 6, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated September 6, 2012, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 473, Laws of 2012.

Amendment Notes — The 2012 amendment substituted "selected to hear election disputes" for "listed and selected to hear election disputes as provided in Section 23-15-951, Mississippi Code of 1972" in the first sentence and substituted "send judges to the sites of disputes" for "make judges available to hear disputes in the county in which the disputes occur" and made a related change in the fourth sentence.

SUBARTICLE B.

CONTESTS OF PRIMARY ELECTIONS.

§ 23-15-921. Nominations to county or county district offices, etc.; petition, notice of contest, investigation, and determination.

JUDICIAL DECISIONS

1. In general.

While the candidate did not file the candidate's earlier petition contesting the election with a member of the Houston Democratic Executive Committee pursuant to Miss. Code Ann. § 23-15-921, the candidate did later file a petition with the committee; the statute does not prohibit submission of an additional petition, and thus the winner's argument concerning the specificity of the earlier petition was irrelevant since the candidate submitted a more specific petition seven days later, the specificity of which the winner did not challenge. Moore v. Parker, 962 So. 2d 558 (Miss. 2007).

§ 23-15-927. Filing of protest and petition in circuit court in event of unreasonable delay by committee; requirement of certificate and cost bond; suspension of committee's order.

When and after any contest has been filed with the county executive committee, or complaint with the State Executive Committee, and the executive committee having jurisdiction fails to promptly meet or, having met, fails or unreasonably delays to fully act upon the contest or complaint or fails to give with reasonable promptness the full relief required by the facts and the law, the contestant shall have the right forthwith to file in the circuit court of the county in which the irregularities are charged to have occurred, or, if more than one (1) county is involved, then in one (1) of the counties, a sworn copy of

his protest or complaint, together with a sworn petition, setting forth with particularity how the executive committee has wrongfully failed to act or to fully and promptly investigate or has wrongfully denied the relief prayed by the contest, with a prayer for a judicial review thereof. A petition for judicial review must be filed within ten (10) days after any contest or complaint has been filed with an executive committee. The petition for a judicial review shall not be filed unless it bears the certificate of two (2) practicing attorneys stating that they have each fully made an independent investigation into the matters of fact and of law upon which the protest and petition are based, and that after the investigation they believe that the protest and petition should be sustained and that the relief prayed in the protest and petitions should be granted; the two (2) attorneys may not be practicing in the same law firm. The petitioner shall give a cost bond in the sum of Three Hundred Dollars ($300.00), with two (2) or more sufficient sureties conditioned to pay all costs in case his petition be dismissed, and an additional bond may be required, by the judge, if necessary, at any subsequent stage of the proceedings. The filing of the petition for judicial review in the manner set forth in this section shall automatically supersede and suspend the operation and effect of the order, ruling or judgment of the executive committee appealed from. In no event shall a prayer for relief be filed in any court other than the appropriate circuit court as authorized in this section.

SOURCES: Derived from 1972 Code § 23-3-45 [Codes, 1942, § 3182; Laws, 1935, ch. 19; Laws, 1968, ch. 567, § 1; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 283; Laws, 2012, ch. 476, § 1, eff September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated September 17, 2012, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 476, Laws of 2012.

Amendment Notes — The 2012 amendment added the second and last sentences; rewrote the former third sentence as the third and fourth sentences and inserted "in the protest and petitions" and "the two (2) attorneys may not be practicing in the same law firm" in the third sentence; and made minor stylistic changes throughout.

JUDICIAL DECISIONS

1. In general.

Miss. Code Ann. § 23-15-927 did not impermissibly violate separation of powers or Miss. Const. art. 6, § 146; rather, the judicial relief sought under the election code was unique unto itself and established by statute, until the process reached the Mississippi Supreme Court, where procedure was controlled by the Mississippi Rules of Appellate Procedure. Jackson v. Bell, 123 So. 3d 436 (Miss. 2013).

2. Certification of petition.

As indicated numerous times by the Mississippi supreme court, whether each of the two certifying attorneys may per-

form an "independent" investigation was not determined by the nature of their relationship with each other, but their association with the election contest; attorneys employed by the same firm were not incapable of performing independent investigations. Moore v. Parker, 962 So. 2d 558 (Miss. 2007).

4. Requisites and sufficiency of petition.

Special judge erred by dismissing a candidate's petition for review of a tax commissioner election with prejudice for the nonmerits issue of lack of jurisdiction because she failed to attach two attorney certificates to her petition, as required by Miss. Code Ann. § 23-15-927; dismissal should have been without prejudice. Jackson v. Bell, 123 So. 3d 436 (Miss. 2013).

Candidate filed his petition for judicial review of the election 15 days, including 11 working days, after the last committee meeting in which the contest was scheduled to be addressed; filing within 11 working days was not a significant departure from the nine working days the Mississippi supreme court found to be "forthwith" in a prior case, and as such the "forthwith" requirement was satisfied. Moore v. Parker, 962 So. 2d 558 (Miss. 2007).

6. Under former Section 23-3-45, generally.

12. —Jurisdiction.

With respect to a mayoral candidate who, in filing a petition for judicial review of an election contest, provided a cost bond of $300 cash without naming sureties, a circuit court erred in dismissing the petition for lack of jurisdiction because the payment itself satisfied the cost-bond requirement in its entirety. Sumner v. City of Como Democratic Exec. Comm., 972 So. 2d 616 (Miss. 2008).

§ 23-15-929. Designation of circuit judge or retired judge on senior status to determine contest; notice; answer and cross-complaint.

Upon the filing of the petition and bond as provided for in Section 23-15-927, the circuit clerk shall immediately, by registered letter or by telegraph or telephone, or personally, notify the Chief Justice of the Supreme Court, or, in his absence, or disability, some other judge of the Supreme Court, who shall forthwith designate and notify a circuit judge or a retired judge on senior status of a district other than that which embraces the county or any of the counties, involved in the contest or complaint, to proceed to the county in which the contest or complaint has been filed to hear and determine the contest or complaint, and it shall be the official duty of the trial judge to proceed to the discharge of the designated duty at the earliest possible date to be fixed by the judge and of which the contestant and contestee shall have reasonable notice, to be served in such reasonable manner as the judge may direct, in response to which notice the contestee shall promptly file his answer, and also his cross-complaint if he has one to prefer.

SOURCES: Derived from 1972 Code § 23-3-47 [Codes, 1942, § 3183; Laws, 1935 ch. 19; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 284; Laws, 2012, ch. 476, § 2, eff September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated September 17, 2012, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 476, Laws of 2012.

Amendment Notes — The 2012 amendment substituted "petition and bond" for "petition certified as aforesaid, and bond," "circuit judge or retired judge on senior status" for "circuit judge or chancellor," "trial judge" for "said circuit judge or chancellor" and "if he has one" for "if any he have"; twice deleted "or chancellor" following "judge"; and made minor stylistic changes.

§ 23-15-931. Issuance of subpoenas and summonses by circuit clerk prior to hearing; assistance by, and findings of, election commissioners; entry of judgment by trial judge.

When the day for the hearing has been set, the circuit clerk shall issue subpoenas for witnesses as in other litigated cases, and he shall also issue a summons to each of the five (5) election commissioners of the county, unless they waive summons, requiring them to attend the hearing, throughout which the commissioners shall sit with the judge as advisors or assistants in the trial and determination of the facts, and as assistants in counts, calculations and inspections, and in seeing to it that ballots, papers, documents, books and the like are diligently secured against misplacement, alteration, concealment or loss both in the sessions and during recesses or adjournments. The judge is, however, the controlling judge both of the facts and the law, and has all the power in every respect of a circuit judge in termtime. The tribunal shall be attended by the sheriff, and clerk, each with sufficient deputies, and by a court reporter. The special tribunal so constituted shall fully hear the contest or complaint de novo, and the original contestant before the party executive committee shall have the burden of proof and the burden of going forward with the evidence in the hearing before the special tribunal. The special tribunal, after the contest or complaint has been fully heard anew, shall make a finding dictated to the reporter covering all controverted material issues of fact, together with any dissents of any commissioner, and thereupon, the trial judge shall enter the judgment which the county executive committee should have entered, of which the election commissioners shall take judicial notice, or if the matter be one within the jurisdiction of the State Executive Committee, the judgment shall be certified and promptly forwarded to the Secretary of the State Executive Committee, and, in the absence of an appeal, it shall be the duty of the State Executive Committee forthwith to reassemble and revise any decision theretofore made by it so as to conform to the judicial judgment; that when the contest is upon a complaint filed with the State Executive Committee and the petition to the court avers that the wrong or irregularity is one which occurred wholly within the proceedings of the state committee, the petition to the court shall be filed in the Circuit Court of Hinds County and, after notice served, shall be promptly heard by the circuit judge of that county, without the attendance of commissioners.

SOURCES: Derived from 1972 Code § 23-3-49 [Codes, 1942, § 3184; Laws, 1935, ch. 19; Laws, 1968, ch. 567, § 2; repealed by Laws, 1986, ch. 495, § 333]; Laws, 1986, ch. 495, § 285; Laws, 2012, ch. 476, § 3, eff September 17, 2012 (the date the United States Attorney General interposed no objection

under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated September 17, 2012, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 476, Laws of 2012.

Amendment Notes — The 2012 amendment deleted "or chancellor" following "judge" in the first and last sentences; substituted "The judge is" for "the judge or chancellor being" and "circuit judge in termtime" for "chancellor in term time" in the second sentence; substituted "Circuit Court of Hinds" for "circuit or chancery court of Hinds" in the last sentence; and made minor stylistic changes throughout.

§ 23-15-933. Appeal from judgment; restrictions upon review of findings of fact.

JUDICIAL DECISIONS

1. In general.

While Miss. Code Ann. § 23-15-933 deems final the tribunal's findings of fact, its legal conclusions are reviewable by the Mississippi supreme court on appeal, and the statute presents no bar to any issues in the case since all issues presented were questions of law; moreover, the issues raised for the supreme court's consideration did not require review of the findings of fact the tribunal made with regard to the nine fraudulently voted ballots. Moore v. Parker, 962 So. 2d 558 (Miss. 2007).

§ 23-15-937. Transfer of hearing; requirement of prompt adjudication; circumstances requiring special election.

If more than one (1) county is involved in a contest or complaint, the judge shall have the authority to transfer the hearing to a more convenient county within the district, if the contest or complaint involves a district office, or within the state if the contest or complaint involves a state office; or the judge may proceed to any county or counties in which the facts complained of are charged to have transpired, and there hear the evidence and make a finding of facts relating to that county and any convenient neighboring county or counties, but, in any event, if possible with due diligence to do so, the hearing must be completed and final judgment rendered in time to permit the printing and distribution of the official ballots at the election for which the contested nomination is made. When any judge lawfully designated to hear a contest or complaint shall not promptly and diligently proceed with the hearing and final determination of the contest or complaint, he shall be guilty of a high misdemeanor in office unless excused by actual illness, or by an equivalent excuse. When no final decision has been made by the time the official ballots are required to be printed, the name of the nominee declared by the party executive committee shall be printed on the official ballots as the party nominee, but the contest or complaint shall not thereby be dismissed but the cause shall nevertheless proceed to final judgment and if the judgment is in favor of the contestant, the election of the contestee shall thereby be vacated and the Governor, or the Lieutenant Governor, in case the Governor is a party to the contest, shall call a special election for the office or offices involved. If the

contestee has already entered upon the term he shall vacate the office upon the qualification of the person elected at the special election, and may be removed by quo warranto if he fail so to do.

SOURCES: Derived from 1972 Code § 23-3-55 [Codes, 1942, § 3187; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 288; Laws, 2012, ch. 476, § 4, eff September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated September 17, 2012, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 476, Laws of 2012.

Amendment Notes — The 2012 amendment substituted "judge" for "judge or chancellor" throughout; substituted "if the contest or complaint involves a district office, or within the state if the contest or complaint involves a state office" for "if in relation to a district office, or within the state if a state office" in the first sentence; substituted " made by the time the official ballots are required to be printed" for "made in time as hereinabove specified" in the third sentence; and made minor stylistic changes throughout the section.

JUDICIAL DECISIONS

1. In general.
6. Under former Section 23-3-55.

1. In general.

In a case in which there were irregularities in the absentee ballots in the primary election for county sheriff so that neither candidate, which included the incumbent, had a majority, but the incumbent won the general election, the governor's writ of election ordering a special primary runoff election to determine the winner and after the primary was decided a new general election violated Miss. Code Ann. § 23-15-937. Under that statute, only one special election was to be held after the general election has already occurred. Thompson v. Jones, 17 So. 3d 524 (Miss. 2008).

Special tribunal erred in ordering a special primary run-off election to be held when it was statutorily mandated that the Governor call such election. Moore v. Parker, 962 So. 2d 558 (Miss. 2007).

6. Under former Section 23-3-55.

The person dissatisfied with the executive committee's decision as to the result of a primary election and seeking by means of a special tribunal to set aside the committee's findings has the burden of proof. Francis v. Sisk, 205 So. 2d 254 (Miss. 1967).

§ 23-15-939. Payment of traveling expenses of judge; compensation of election commissioners.

The reasonable traveling expenses of the judge shall be paid by order of the board of supervisors of the county or counties in which a contest or complaint is heard, upon an itemized certificate thereof by the judge. The election commissioners shall be compensated for their services rendered under this section as is provided in Section 23-15-227.

SOURCES: Derived from 1972 Code § 23-3-57 [Codes, 1942, § 3188; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 289; Laws, 2012, ch. 476, § 5, eff September 17, 2012 (the date the United States

Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated September 17, 2012, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 476, Laws of 2012.

Amendment Notes — The 2012 amendment deleted "or chancellor" following "judge" twice and deleted "under this section" following "contest or complaint" in the first sentence, and made minor stylistic changes.

SUBARTICLE C.

CONTESTS OF OTHER ELECTIONS.

SEC.

§ 23-15-951. Filing of petition; designation of judges to hear election contests; trial by, and verdict of, jury; assumption of office.

Except as otherwise provided by Section 23-15-955 or 23-15-961, a person desiring to contest the election of another person returned as elected to any office within any county, may, within twenty (20) days after the election, file a petition in the office of the clerk of the circuit court of the county, setting forth the grounds upon which the election is contested. When such a petition is filed, the circuit clerk shall immediately notify, by registered letter, telegraph, telephone, or personally the Chief Justice of the Supreme Court or in his absence, or disability, some other Justice of the Supreme Court, who shall forthwith designate and notify a circuit judge or chancellor of a district other than that which embraces the district, subdistrict, county or any of the counties, involved in the contest or complaint, to proceed to the county in which the contest or complaint has been filed to hear and determine the contest or complaint. The circuit clerk shall also cause a copy of such petition to be served upon the contestee, which shall serve as notice to such contestee.

The Supreme Court shall compile a list of judges throughout the state to hear such disputes before an election. It shall be the official duty of the designated circuit judge or chancellor to proceed to discharge the duty of hearing the contest at the earliest possible date. The date of the contest shall be fixed by the judge or chancellor, and the judge or chancellor shall provide reasonable notice to the contestant and the contestee of the date and time fixed for the contest. The judge or chancellor shall cause the contestant and contestee to be served in a reasonable manner. When the contestee is served, such contestee shall promptly file his answer, and cross-complaint, if the contestee has a cross-complaint.

The court shall, at the first term, cause an issue to be made up and tried by a jury, and the verdict of the jury shall find the person having the greatest

number of legal votes at the election. If the jury shall find against the person returned elected, the clerk shall issue a certificate thereof; and the person in whose favor the jury shall find shall be commissioned by the Governor, and shall qualify and enter upon the duties of his office. Each party shall be allowed ten (10) peremptory challenges, and new trials shall be granted and costs awarded as in other cases. In case the election of district attorney or other state district election be contested, the petition may be filed in any county of the district or in any county of an adjoining district within twenty (20) days after the election, and like proceedings shall be had thereon as in the case of county officers, and the person found to be entitled to the office shall qualify as required by law and enter upon the duties of his office.

A person desiring to contest the election of another person returned as elected to any seat in the Mississippi Legislature shall comply with the provisions of Section 23-15-955. A person desiring to contest the qualifications of a candidate for nomination in a political party primary election shall comply with the provisions of Section 23-15-961.

SOURCES: Derived from 1972 Code § 23-5-187 [Codes, Hutchinson's 1848, ch. 7, art 7 (1); 1857, ch. 4, art 23; 1871, § 391; 1880, § 150; 1892, § 3679; 1906, § 4186; Hemingway's 1917, § 6820; 1930, § 6258; 1942, § 3287; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 291; Laws, 1988, ch. 577, § 5; Laws, 1999, ch. 301, § 13; Laws, 2000, ch. 450, § 1; Laws, 2013, ch. 432, § 1, eff October 22, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965).

Editor's Note — The effective date of Chapter 432, Laws of 2013, which amended this section, is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. For that reason, the Mississippi Attorney General's Office submitted Chapter 432, Laws of 2013, to the United States Attorney General, in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated October 22, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 432 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 432, so Chapter 432 became effective from and after October 22, 2013, the date of the United States Attorney General's response letter.

Amendment Notes — The 2013 amendment in the first paragraph deleted "and the clerk shall thereupon issue a summons to the party whose election is contested, returnable to the next term of the court, which summons shall be served as in other cases; and" at the end of the first sentence and added the last two sentences; and added the second paragraph.

SUBARTICLE D.

CONTESTS OF QUALIFICATIONS OF CANDIDATES.

SEC.

§ 23-15-961. Exclusive procedures for contesting qualifications of candidate for primary election; exceptions.

(1) Any person desiring to contest the qualifications of another person as a candidate for nomination in a political party primary election shall file a petition specifically setting forth the grounds of the challenge within ten (10) days after the qualifying deadline for the office in question. The petition shall be filed with the executive committee with whom the candidate in question qualified.

(2) Within ten (10) days of receipt of the petition described in subsection (1) of this section, the appropriate executive committee shall meet and rule upon the petition. At least two (2) days before the hearing to consider the petition, the appropriate executive committee shall give notice to both the petitioner and the contested candidate of the time and place of the hearing on the petition. Each party shall be given an opportunity to be heard at that meeting and present evidence in support of his position.

(3) If the appropriate executive committee fails to rule upon the petition within the time required in subsection (2) of this section, that inaction shall be interpreted as a denial of the request for relief contained in the petition.

(4) Any party aggrieved by the action or inaction of the appropriate executive committee may file a petition for judicial review to the circuit court of the county in which the executive committee whose decision is being reviewed sits. The petition must be filed no later than fifteen (15) days after the date the petition was originally filed with the appropriate executive committee. The person filing for judicial review shall give a cost bond in the sum of Three Hundred Dollars ($300.00) with two (2) or more sufficient sureties conditioned to pay all costs in case his petition be dismissed, and an additional bond may be required, by the court, if necessary, at any subsequent stage of the proceedings.

(5) Upon the filing of the petition and bond, the circuit clerk shall immediately, by registered letter or by telegraph or by telephone, or personally, notify the Chief Justice of the Supreme Court, or in his absence, or disability, some other judge of the Supreme Court, who shall forthwith designate and notify a circuit judge or retired judge on senior status of a district other than that which embraces the district, subdistrict, county or any of the counties, involved in the contest or complaint, to proceed to the county in which the contest or complaint has been filed to hear and determine the contest or complaint. It shall be the official duty of the trial judge to proceed to the

discharge of the designated duty at the earliest possible date to be fixed by the judge and of which the contestant and contestee shall have reasonable notice. The contestant and contestee are to be served in a reasonable manner as the judge may direct, in response to which notice the contestee shall promptly file his answer, and also his cross-complaint if he has a cross-complaint. The hearing before the trial court shall be de novo. The matter shall be tried to the trial judge, without a jury. After hearing the evidence, the trial judge shall determine whether the candidate whose qualifications have been challenged is legally qualified to have his name placed upon the ballot in question. The trial judge may, upon disqualification of any such candidate, order that such candidate shall bear the court costs of the proceedings.

(6) Within three (3) days after judgment is rendered by the circuit court, the contestant or contestee, or both, may file an appeal in the Supreme Court upon giving a cost bond in the sum of Three Hundred Dollars ($300.00), together with a bill of exceptions which shall state the point or points of law at issue with a sufficient synopsis of the facts to fully disclose the bearing and relevancy of such points of law. The bill of exceptions shall be signed by the trial judge, or in case of his absence, refusal or disability, by two (2) disinterested attorneys, as is provided by law in other cases of bills of exception. The filing of such appeals shall automatically suspend the decision of the circuit court and the appropriate executive committee is entitled to proceed based upon their decision unless and until the Supreme Court, in its discretion, stays further proceedings in the matter. The appeal shall be immediately docketed in the Supreme Court and referred to the court en banc upon briefs without oral argument unless the court shall call for oral argument, and shall be decided at the earliest possible date, as a preference case over all others. The Supreme Court shall have the authority to grant such relief as is appropriate under the circumstances.

(7) The procedure set forth in this section shall be the sole and only manner in which the qualifications of a candidate seeking public office as a party nominee may be challenged prior to the time of his nomination or election. After a party nominee has been elected to public office, the election may be challenged as otherwise provided by law. After a party nominee assumes an elective office, his qualifications to hold that office may be contested as otherwise provided by law.

SOURCES: Derived from 1942 Code § 3151 [Codes, Hemingway's 1917, § 6431; 1930, § 5904; Laws, 1916, ch. 161; repealed by Laws, 1970, ch. 506, § 33 and 1986, ch. 495, § 346]; en, Laws, 1988, ch. 577, § 1; Laws, 1990, ch. 307, § 1; Laws, 1999, ch. 301, § 14; Laws, 2012, ch. 476, § 6, eff September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated September 17, 2012, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 476, Laws of 2012.

Amendment Notes — The 2012 amendment substituted "in subsection (1) of this section" for "above" in the first sentence of (2); substituted "in subsection (2) of this

section" for "above" in (3); in (5), substituted "a circuit judge or retired judge on senior status" for "from the list provided in Section 23-15-951 a circuit judge or chancellor" in the first sentence, substituted "trial judge" for "circuit judge" "trial court" for "circuit court" and deleted "or chancellor" following "judge" throughout; substituted "in this section" for "above" in the first sentence in (7); and made minor stylistic changes throughout.

JUDICIAL DECISIONS

2. Relation to other laws.

Black chairman of a county political party executive committee was guilty of racial discrimination under § 2 of the Voting Rights Act because, inter alia, he sabotaged a white party incumbent's participation in the executive committee's nomination process in order to replace him on the primary ballot with a black candidate rather than properly challenging his qualifications as provided in Miss. Code Ann. § 23-15-961. United States v. Brown, 494 F. Supp. 2d 440 (S.D. Miss. June 29, 2007), affirmed by 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

§ 23-15-963. Exclusive procedures for contesting qualifications of candidate for general election; exceptions.

(1) Any person desiring to contest the qualifications of another person who has qualified pursuant to the provisions of Section 23-15-359, Mississippi Code of 1972, as a candidate for any office elected at a general election, shall file a petition specifically setting forth the grounds of the challenge not later than thirty-one (31) days after the date of the first primary election set forth in Section 23-15-191, Mississippi Code of 1972. Such petition shall be filed with the same body with whom the candidate in question qualified pursuant to Section 23-15-359, Mississippi Code of 1972.

(2) Any person desiring to contest the qualifications of another person who has qualified pursuant to the provisions of Section 23-15-213, Mississippi Code of 1972, as a candidate for county election commissioner elected at a general election, shall file a petition specifically setting forth the grounds of the challenge no later than sixty (60) days prior to the general election. Such petition shall be filed with the county board of supervisors, being the same body with whom the candidate in question qualified pursuant to Section 23-15-213, Mississippi Code of 1972.

(3) Any person desiring to contest the qualifications of another person who has qualified pursuant to the provisions of Section 23-15-361, Mississippi Code of 1972, as a candidate for municipal office elected on the date designated by law for regular municipal elections, shall file a petition specifically setting forth the grounds of the challenge no later than thirty-one (31) days after the date of the first primary election set forth in Section 23-15-309, Mississippi Code of 1972. Such petition shall be filed with the municipal commissioners of election, being the same body with whom the candidate in question qualified pursuant to Section 23-15-361, Mississippi Code of 1972.

(4) Within ten (10) days of receipt of the petition described in subsections (1), (2) and (3) of this section, the appropriate election officials shall meet and rule upon the petition. At least two (2) days before the hearing to consider the

petition, the appropriate election officials shall give notice to both the petitioner and the contested candidate of the time and place of the hearing on the petition. Each party shall be given an opportunity to be heard at such meeting and present evidence in support of his position.

(5) If the appropriate election officials fail to rule upon the petition within the time required above, such inaction shall be interpreted as a denial of the request for relief contained in the petition.

(6) Any party aggrieved by the action or inaction of the appropriate election officials may file a petition for judicial review to the circuit court of the county in which the election officials whose decision is being reviewed sits. Such petition must be filed no later than fifteen (15) days after the date the petition was originally filed with the appropriate election officials. Such person filing for judicial review shall give a cost bond in the sum of Three Hundred Dollars ($300.00) with two (2) or more sufficient sureties conditioned to pay all costs in case his petition be dismissed, and an additional bond may be required, by the court, if necessary, at any subsequent stage of the proceedings.

(7) The circuit court with whom such a petition for judicial review has been filed shall at the earliest possible date set the matter for hearing. Notice shall be given the interested parties of the time set for hearing by the circuit clerk. The hearing before the circuit court shall be de novo. The matter shall be tried to the circuit judge, without a jury. After hearing the evidence, the circuit judge shall determine whether the candidate whose qualifications have been challenged is legally qualified to have his name placed upon the ballot in question. The circuit judge may, upon disqualification of any such candidate, order that such candidate shall bear the court costs of the proceedings.

(8) Within three (3) days after judgment is rendered by the circuit court, the contestant or contestee, or both, may file an appeal in the Supreme Court upon giving a cost bond in the sum of Three Hundred Dollars ($300.00), together with a bill of exceptions which shall state the point or points of law at issue with a sufficient synopsis of the facts to fully disclose the bearing and relevancy of such points of law. The bill of exceptions shall be signed by the trial judge, or in case of his absence, refusal or disability, by two (2) disinterested attorneys, as is provided by law in other cases of bills of exception. The filing of such appeals shall automatically suspend the decision of the circuit court and the appropriate election officials are entitled to proceed based upon their decision unless and until the Supreme Court, in its discretion, stays further proceedings in the matter. The appeal shall be immediately docketed in the Supreme Court and referred to the court en banc upon briefs without oral argument unless the court shall call for oral argument, and shall be decided at the earliest possible date, as a preference case over all others. The Supreme Court shall have the authority to grant such relief as is appropriate under the circumstances.

(9) The procedure set forth above shall be the sole and only manner in which the qualifications of a candidate seeking public office who qualified pursuant to the provisions of Sections 23-15-359, 23-15-213 and 23-15-361, Mississippi Code of 1972, may be challenged prior to the time of his election.

After any such person has been elected to public office, the election may be challenged as otherwise provided by law. After any person assumes an elective office, his qualifications to hold that office may be contested as otherwise provided by law.

SOURCES: Derived from 1972 Code § 23-3-63 [Codes, 1942, § 3191; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1988, ch. 577, § 2; Laws, 1990, ch. 307, § 2; Laws, 2013, ch. 406, § 1, eff August 1, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965).

Editor's Note — The effective date of Chapter 406, Laws of 2013, which amended this section, is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. For that reason, the Mississippi Attorney General's Office submitted Chapter 406, Laws of 2013, to the United States Attorney General, in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated August 1, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 406 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 406, so Chapter 406 became effective from and after August 1, 2013, the date of the United States Attorney General's response letter.

Amendment Notes — The 2013 amendment added (2) and (3) and renumbered the remaining subsections accordingly; substituted "in subsections (1), (2) and (3) of this section" for "above" in the first sentence in (4); and substituted "Sections 23-15-359, 23-15-213 and 23-15-361" for "Sections 23-15-359" in the first sentence in (9).

ARTICLE 31.

JUDICIAL OFFICES.

SUBARTICLE A.

GENERAL PROVISIONS.

SEC.

§ 23-15-977. Filing of intent to be candidate and fees by candidates for judicial office; notification of county commissioners of filings; procedures to be followed if there is only one candidate who becomes disqualified from holding judicial office after filing deadline.

(1) Except as otherwise provided in this section, all candidates for judicial office as defined in Section 23-15-975 of this subarticle shall file their intent to be a candidate with the proper officials not later than 5:00 p.m. on the first Friday after the first Monday in May prior to the general election for judicial office and shall pay to the proper officials the following amounts:

(a) Candidates for Supreme Court judge and Court of Appeals, the sum of Two Hundred Dollars ($200.00).

(b) Candidates for circuit judge and chancellor, the sum of One Hundred Dollars ($100.00).

(c) Candidates for county judge and family court judge, the sum of Fifteen Dollars ($15.00).

Candidates for judicial office may not file their intent to be a candidate and pay the proper assessment before January 1 of the year in which the election for the judicial office is held.

(2) Candidates for judicial offices listed in paragraphs (a) and (b) of subsection (1) of this section shall file their intent to be a candidate with, and pay the proper assessment made pursuant to subsection (1) of this section to, the State Board of Election Commissioners.

(3) Candidates for judicial offices listed in paragraph (c) of subsection (1) of this section shall file their intent to be a candidate with, and pay the proper assessment made pursuant to subsection (1) of this section to, the circuit clerk of the proper county. The circuit clerk shall notify the county commissioners of election of all persons who have filed their intent to be a candidate with, and paid the proper assessment to, such clerk. Such notification shall occur within two (2) business days and shall contain all necessary information.

(4) If only one (1) person files his intent to be a candidate for a judicial office and that person subsequently dies, resigns or is otherwise disqualified from holding the judicial office after the deadline provided for in subsection (1) of this section but more than seventy (70) days before the date of the general election, the Governor, upon notification of the death, resignation or disqualification of the person, shall issue a proclamation authorizing candidates to file their intent to be a candidate for that judicial office for a period of not less than seven (7) nor more than ten (10) days from the date of the proclamation.

(5) If only one (1) person qualifies as a candidate for a judicial office and that person subsequently dies, resigns or is otherwise disqualified from holding the judicial office within seventy (70) days before the date of the general election, the judicial office shall be considered vacant for the new term and the vacancy shall be filled as provided in by law.

SOURCES: Laws, 1994, ch 564, § 79; Laws, 2000, ch. 592, § 15; Laws, 2010, ch. 379, § 1; Laws, 2011, ch. 509, § 1, eff July 26, 2011 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 379, § 1.

By letter dated July 26, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2011, ch. 509.

Amendment Notes — The 2010 amendment added the last paragraph in (1).

The 2011 amendment added "Except as otherwise provided in this section" to the beginning of (1); and added (4) and (5).

§ 23-15-981. Two or more candidates qualify for judicial office; majority vote wins; runoff election.

RESEARCH REFERENCES

ALR. Validity of Runoff Voting Election Methodology. 67 A.L.R.6th 609.

SUBARTICLE D.

CAMPAIGN FINANCING.

§ 23-15-1021. Limitations on contributions.

RESEARCH REFERENCES

ALR. Constitutional Validity of State or Local Regulation of Contributions by or to Political Action Committees. 24 A.L.R. 6th 179.

Construction and Application of Supreme Court's Holding in *Citizens United v. Federal Election Com'n,* 130 S. Ct. 876, 175 L. Ed. 2d 753, 187 L.R.R.M. (BNA) 2961, 159 Lab. Cas. (CCH) P 10166 (2010), That Government May Not Prohibit Independent and Indirect Corporate Expenditures on Political Speech. 65 A.L.R.6th 503.

ARTICLE 33.

MEMBERS OF CONGRESS.

SEC.

§ 23-15-1037. Division of state into five congressional districts.

(1) The State of Mississippi is hereby divided into five (5) congressional districts as follows:

FIRST DISTRICT. — The First Congressional District shall be composed of the following counties and portions of counties: Alcorn, Benton, Calhoun, Chickasaw, Choctaw, DeSoto, Itawamba, Lafayette, Lee, Marshall, Monroe, Pontotoc, Prentiss, Tate, Tippah, Tishomingo, Union, Webster, Yalobusha; in Grenada County the precincts of Providence, Mt. Nebo, Hardy and Pea Ridge; in Montgomery County the precincts of North Winona, Lodi, Stewart, Nations and Poplar Creek; in Oktibbeha County, the precincts of Double Springs, Maben and Sturgis; in Panola County the precincts of East Sardis, South Curtis, Tocowa, Pope, Courtland, Cole's Point, North Springport, South Springport, Eureka, Williamson, East Batesville 4, West Batesville 4, Fern Hill, North Batesville A, East Batesville 5 and West Batesville 5; and in Tallahatchie County the precincts of Teasdale, Enid, Springhill, Charleston Beat 1, Charleston Beat 2, Charleston Beat 3, Paynes, Leverette, Cascilla, Murphreesboro and Rosebloom.

SECOND DISTRICT. — The Second Congressional District shall be composed of the following counties and portions of counties: Bolivar, Carroll, Claiborne, Coahoma, Holmes, Humphreys, Issaquena, Jefferson, Leflore, Quitman, Sharkey, Sunflower, Tunica, Warren, Washington, Yazoo; in Attala County the precincts of Northeast, Hesterville, Possomneck, North Central, McAdams, Newport, Sallis and Southwest; that portion of Grenada County not included in the First Congressional District; in Hinds County Precincts 11, 12, 13, 22, 23, 27, 28, 29, 30, 40, 41, 83, 84 and 85, and the precincts of Bolton, Brownsville, Cayuga, Chapel Hill, Cynthia, Edwards, Learned, Pine Haven, Pocahontas, St. Thomas, Tinnin, Utica 1 and Utica 2; in Leake County the precincts of Conway, West Carthage, Wiggins, Thomastown and Ofahoma; in Madison County the precincts of Farmhaven, Canton Precinct 2, Canton Precinct 3, Cameron Street, Canton Precinct 6, Bear Creek, Gluckstadt, Smith School, Magnolia Heights, Flora, Virlilia, Canton Precinct 5, Cameron, Couparle, Camden, Sharon, Canton Precinct 1 and Canton Precinct 4; that portion of Montgomery County not included in the First Congressional District; that portion of Panola County not included in the First Congressional District; and that portion of Tallahatchie County not included in the First Congressional District.

THIRD DISTRICT. — The Third Congressional District shall be composed of the following counties and portions of counties: Clarke, Clay, Jasper, Kemper, Lauderdale, Lowndes, Neshoba, Newton, Noxubee, Rankin, Scott, Smith, Winston; that portion of Attala County not included in the Second Congressional District; in Jones County the precincts of Northwest High School, Shady Grove, Sharon, Erata, Glade, Myrick School, Northeast High School, Rustin, Sandersville Civic Center, Tuckers, Antioch and Landrum; that portion of Leake County not included in the Second Congressional District; that portion of Madison County not included in the Second Congressional District; that portion of Oktibbeha County not included in the First Congressional District; and in Wayne County the precincts of Big Rock, Yellow Creek, Hiwannee, Diamond, Chaparral, Matherville, Coit and Eucutta.

FOURTH DISTRICT. — The Fourth Congressional District shall be composed of the following counties and portions of counties: Adams, Amite,

Copiah, Covington, Franklin, Jefferson Davis, Lawrence, Lincoln, Marion, Pike, Simpson, Walthall, Wilkinson; that portion of Hinds County not included in the Second Congressional District; and that portion of Jones county not included in the Third Congressional District.

FIFTH DISTRICT. — The Fifth Congressional District shall be composed of the following counties and portions of counties: Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Pearl River, Perry, Stone; and that portion of Wayne County not included in the Third Congressional District.

(2) The boundaries of the congressional districts described in subsection (1) of this section shall be the boundaries of the counties and precincts listed in subsection (1) as such boundaries existed on October 1, 1990.

SOURCES: Derived from 1972 Code § 23-5-223 [Codes, 1892, § 3691; 1906, § 4198; Hemingway's 1917, § 6832; 1930, § 6276; 1942, § 3305; Laws, 1902, ch. 61; Laws, 1932, ch. 136; Laws, 1952, ch. 401, § 1; Laws, 1956, ch. 407; Laws, 1962, ch. 576, § 1; Laws, 1966, ch. 616, § 1; Laws, 1972, ch. 305, § 1; Laws, 1981, 1st Ex Sess, ch. 8, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 307; Laws, 1991 Extra Session, ch. 2, § 1, eff from and after February 21, 1992 (the date the United States Attorney General interposed no objection to this amendment).

Editor's Note — As a result of the 2000 federal decennial census, the number of representatives in Congress to which the State of Mississippi is entitled was reduced from five to four. The State of Mississippi was unable to redraw its congressional districts to reduce the number of districts. The United States District Court for the Southern District of Mississippi, in the case of *Smith v. Clark* (Civil Action No. 3:01-CV-855WS), by order dated February 26, 2002, enjoined the state from implementing the five-district congressional redistricting plan codified in Section 25-15-1037 and ordered the state to implement the four-district congressional redistricting plan adopted by the court in that order for congressional primary and general elections for the State of Mississippi in 2002 and all succeeding congressional primary and general elections thereafter, until the State of Mississippi produced a constitutional congressional redistricting plan. The State of Mississippi was again unable to redistrict its congressional districts following the 2010 federal decennial census. The United State District Court for the Southern District of Mississippi in the case of *Smith v. Hosemann* (Civil Action No. 3:01-cv-855-HTW-DCB), by order dated December 30, 2011, ordered the state to implement the four-district congressional redistricting plan adopted by the court in that order for conducting congressional primary and general elections for the State of Mississippi in 2012, and all succeeding congressional primary and general elections thereafter until such time as the State of Mississippi produces a constitutional congressional redistrict plan.

The congressional districts that the court ordered implemented by the December 30, 2011, order are as described as follows:

FIRST DISTRICT-

Alcorn MS County
Benton MS County
Calhoun MS County
Chickasaw MS County
Choctaw MS County
Clay MS County
DeSoto MS County
Itawamba MS County
Lafayette MS County

Lee MS County
Lowndes MS County
Marshall MS County
Monroe MS County
Oktibbeha MS County
VTD: Bell Schoolhouse
VTD: Bradley
VTD: Center Grove
VTD: Maben
VTD: Sturgis
Pontotoc MS County
Prentiss MS County
Tate MS County
Tippah MS County
Tishomingo MS County
Union MS County
Webster MS County
Winston MS County
SECOND DISTRICT-
Attala MS County
Bolivar MS County
Carroll MS County
Claiborne MS County
Coahoma MS County
Copiah MS County
Grenada MS County
Hinds MS County
VTD: 10
VTD: 11
VTD: 12
VTD: 13
VTD: 16
VTD: 18
VTD: 19
VTD: 2
VTD: 20
VTD: 21
VTD: 22
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VTD: 95
VTD: 96
VTD: 97
VTD: Bolton
VTD: Brownsville
VTD: Byram 1
VTD: Byram 2
VTD: Cayuga
VTD: Chapel Hill
VTD: Clinton 1
VTD: Clinton 2

VTD: Clinton 3
VTD: Clinton 4
VTD: Clinton 5
VTD: Clinton 6
VTD: Cynthia
VTD: Dry Grove
VTD: Edwards
VTD: Jackson State
VTD: Learned
VTD: Old Byram
VTD: Pinehaven
VTD: Pocahontas
VTD: Raymond 1
VTD: Raymond 2
VTD: Spring Ridge
VTD: St. Thomas
VTD: Terry
VTD: Tinnin
VTD: Utica 1
VTD: Utica 2
Holmes MS County
Humphreys MS County
Issaquena MS County
Jefferson MS County
Leake MS County
Leflore MS County
Madison MS County
VTD: Bible Church
VTD: Camden
VTD: Cameron
VTD: Canton Precinct 1
VTD: Canton Precinct 2
VTD: Canton Precinct 3
VTD: Canton Precinct 4
VTD: Canton Precinct 5
VTD: Canton Precinct 7
VTD: Cedar Grove
VTD: Couparle
VTD: Liberty
VTD: Luther Branson School
VTD: Mad. Co. Bap. Fam. Lf.Ct
VTD: Magnolia Heights
VTD: New Industrial Park
VTD: Ratliff Ferry
VTD: Sharon
VTD: Tougaloo
VTD: Virlilia
Montgomery MS County
Panola MS County
Quitman MS County
Sharkey MS County
Sunflower MS County
Tallahatchie MS County
Tunica MS County
Warren MS County

Washington MS County
Yalobusha MS County
Yazoo MS County
THIRD DISTRICT-
Adams MS County
Amite MS County
Clarke MS County
VTD: Beaver Darn
VTD: Desoto
VTD: East Quitman
VTD: Energy
VTD: Enterprise
VTD: Harmony Beat 1
VTD: Hannony Beat 2
VTD: North Quitman
VTD: Oak Grove
VTD: Pachuta
VTD: Pineridge
VTD: Rolling Creek
VTD: Snell
VTD: Souinlovie
VTD: South Quitman
VTD: Stonewall Beat 1
VTD: Stonewall Beat 3
VTD: Union
Covington MS County
Franklin MS County
Hinds MS County
VTD: 1
VTD: 14
VTD: 15
VTD: 17
VTD: 32
VTD: 33
VTD: 34
VTD: 35
VTD: 36
VTD: 37
VTD: 44
VTD: 45
VTD: 47
VTD: 5
VTD: 78
VTD: 8
VTD: 9
Jasper MS County
Jefferson Davis MS County
Kemper MS County
Lauderdale MS County
Lawrence MS County
Lincoln MS County
Madison MS County
VTD: Bear Creek
VTD: Cobblestone
VTD: Flora

VTD: Gluckstadt
VTD: Highland Colony Bap. Ch.
VTD: Lorman-Cavalier
VTD: Madison 1
VTD: Madison 2
VTD: Madison 3
VTD: Main Harbor
VTD: NorthBay
VTD: Ridgeland 1
VTD: Ridgeland 3
VTD: Ridgeland 4
VTD: Ridgeland First Meth. Ch.
VTD: Ridgeland Tennis Center
VTD: Smith School
VTD: SunnyBrook
VTD: Trace Harbor
VTD: Victory Baptist Church
VTD: Whispering Lake
VTD: Yandell Road
Neshoba MS County
Newton MS County
Noxubee MS County
Oktibbeha MS County
VTD: Central Starkville
VTD: Craig Springs
VTD: Double Springs
VTD: East Starkville
VTD: Gillespie Street Center
VTD: Hickory Grove
VTD: North Adaton
VTD: North Longview
VTD: North Starkville 2
VTD: North Starkville 3
VTD: Northeast Starkville
VTD: Oktoc
VTD: Osborn
VTD: Self Creek
VTD: Sessums
VTD: South Adaton
VTD: South Longview
VTD: South Starkville
VTD: Southeast Oktibehha
VTD: West Starkville
Pike MS County
Rankin MS County
Scott MS County
Simpson MS County
Smith MS County
Walthall MS County
Wilkinson MS County
FOURTH DISTRICT-
Clarke MS County
VTD: Carmichael
VTD: Langsdale
VTD: Manassa

VTD: Shubuta
VTD: Springs
Forrest MS County
George MS County
Greene MS County
Hancock MS County
Harrison MS County
Jackson MS County
Jones MS County
Lamar MS County
Marion MS County
Pearl River MS County
Perry MS County
Stone MS County
Wayne MS County

ARTICLE 35.

POLITICAL PARTIES.

SEC.
23-15-1054. Methods and procedures for selection of temporary county executive committee.

§ 23-15-1054. Methods and procedures for selection of temporary county executive committee.

(1) If there be any political party, or parties, in any county which shall not have a party executive committee for such county, such political party, or parties, shall within thirty (30) days of the date for which a candidate for a county office is required to qualify in such county, select qualified electors of that county and of that party's political faith to serve on a temporary county executive committee until members of a county executive committee are elected at the next regular election for executive committees. The temporary county executive committee shall be selected in the following manner: The chairman of the state executive committee of the party desiring to select a temporary county executive committee, upon petition of five (5) or more members of that political faith, shall call a mass meeting of the qualified electors of their political faith who reside in such county to meet at some convenient place within such county, at a time to be designated in the call, and at such mass convention the members of that political faith shall select a temporary county executive committee which shall serve until members of a county executive committee are elected at the next regular election for executive committees. The public shall be given notice of such mass meeting as provided in subsection (4) of this section. The chairman of the state executive committee shall authorize the call within five (5) calendar days of receipt of the petition. If the chairman of the state executive committee is either incapacitated, unavailable or nonresponsive and does not authorize the mass call within five (5) calendar days of receipt of the petition, any elected officer of the state executive committee may authorize the call within five (5) calendar days.

If no elected officer of the state executive committee acts to approve such petition after an additional five (5) calendar days from the date, the chair of the state executive committee not taking action as provided by this section, the petitioners shall be authorized to produce the call themselves.

(2) If no county executive committee is selected or otherwise formed before an election, the state executive committee may serve as the temporary county executive committee and exercise all of the duties of the county executive committee for the county election. After a state executive committee has fulfilled its duties as the temporary county executive committee, as soon as practicable thereafter, the state executive committee shall select a county executive committee no later than before the next county election.

(3) A person who has been convicted of a felony in a court of this state or any other state or a court of the United States, shall be barred from serving as a member of a county executive committee.

(4) The state executive committee shall publish a copy of its call for a meeting in some newspaper published in the county affected for three (3) weeks preceding the date set for the mass convention, or if there be no newspaper published in the county, then in some newspaper having general circulation in the county and by posting notices in three (3) public places in the county, one (1) of which shall be the county courthouse or the location where the county board of supervisors meets to conduct business not less than three (3) weeks before the date for the mass convention.

SOURCES: Laws, 2011, ch. 509, § 5, eff July 26, 2011 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's Note — By letter dated July 26, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 2011, ch. 509.

CHAPTER 17

Amendments to Constitution by Voter Initiative

SEC.

§ 23-17-5. Submission of proposed initiative to Attorney General; review; recommendations; certificate of review; filing of proposed initiative and certificate.

Cross References — Secretary of State, with approval of Attorney General, authorized to make nonsubstantive, clerical or technical corrections in the section number reference or designation of proposed constitutional amendment at any time following Attorney General's certificate of review and before ballot is printed, see § 23-17-8.

§ 23-17-7. Assignment of serial number; designation as "Initiative Measure No. ____."

Cross References — Secretary of State, with approval of Attorney General, authorized to make nonsubstantive, clerical or technical corrections in the section number reference or designation of proposed constitutional amendment at any time following Attorney General's certificate of review and before ballot is printed, see § 23-17-8.

§ 23-17-8. Correction of certain nonsubstantive clerical or technical errors in the section number reference or designation of a proposed constitutional amendment.

When an amendment to the Mississippi Constitution of 1890 is proposed to the qualified electors of the state under the voter initiative procedure set forth in Section 23-17-1, et seq., the Secretary of State, with the approval of the Attorney General, may make a nonsubstantive clerical or technical correction in the section number reference or designation of the proposed amendment contained in an initiative measure, as may be appropriate or necessary in order to prevent the use of an existing section number or the possibility of the initiative being declared invalid only because of an error in the section number designation. Such a correction may be made at any time after the Attorney General's certificate of review with regard to the initiative measure has been issued, and before the ballot for the initiative measure is printed. The provisions of this section do not authorize the Secretary of State to make any change other than a nonsubstantive correction in the section number reference or designation of the proposed amendment contained in the initiative measure.

SOURCES: Laws, 2011, ch. 304, § 1, eff July 28, 2011 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's Note — By letter dated July 28, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 2011, ch. 304.

§ 23-17-9. Formulation of ballot title and summary of initiative measure.

Cross References — Secretary of State, with approval of Attorney General, authorized to make nonsubstantive, clerical or technical corrections in the section number reference or designation of proposed constitutional amendment at any time following Attorney General's certificate of review and before ballot is printed, see § 23-17-8.

§ 23-17-11. Notice of ballot title and summary to initiator; publication of title and summary.

Cross References — Secretary of State, with approval of Attorney General, authorized to make nonsubstantive, clerical or technical corrections in the section number reference or designation of proposed constitutional amendment at any time following Attorney General's certificate of review and before ballot is printed, see § 23-17-8.

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